Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DOMINICK A. PILLI, *Petitioner,*
versus

VIRGINIA STATE BAR, *Respondent*

ON APPEAL FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF VIRGINIA
PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

After rescheduling a trial, an attorney was ordered to show cause for not appearing for its initial setting. He appeared with his client and passed on the show cause hearing, but it was transferred to another courtroom, called, and sanctions entered against him while he briefly stepped outside to attend to another matter in a nearby courtroom – despite having informed opposing counsel of the situation and despite the judge being told that he was in another courtroom. Then, the court found him in contempt for his absence in so doing, also intimidating his waiting client. The attorney's response essentially stated that the court had uttered untrue statements. Later, after the attorney complained about the Judge, the state bar instituted disciplinary proceedings against the attorney resulting in significant punishment.

1. Should the attorney be punished for his statements in the Reply? Were any of those statements knowingly contemptuous?

a. Did the statements in the Reply lack reasonable basis in fact and law?

b. Should the attorney be punished for protected First Amendment expressions of opinion?

c. Are factual or mixed statements sanctionable if they are neither false nor made with reckless disregard for the truth?

d. Should the attorney be punished for privileged speech in pleadings?

e. Does due process permit punishment for contents of a document about which no complaint initially was raised below?

SHORT ANSWERS

No. Under century-old law in the jurisdiction, the attorney could not have been in contempt under the circumstances. The Reply was substantially true and neither it nor the attorney's conduct were contemptuous – much less knowingly or willfully so.

TABLE OF CONTENTS

I. Factual Background.....1

A. The Chain of Events in Late 2001.....1

1. The (Successfully-Defended) Underlying Action.....1

2. The Continuance Request and Related Clerical Mistakes.....2

3. Local Practice and Comedy of Errors Led to Missed Hearing.....2

4. Court Refusal to Right Initial Wrong Caused Intense Frustration....2

B. These Proceedings.....3

1. Alleged Misconduct and Punishment.....3

2. Procedural Posture.....3

II. Argument & Authorities.....5

A. Even Frustrated Response Failed to Rise to Level of Violating Rule 8.2.....5

1. A Response to an Erroneous Allegation of Contempt was not Mr. Pilli's Best Work.....6

2. The *Wise* Decision and Context Justified Mr. Pilli's Frustration.....8

B. Basing Punishment on the Reply Would Violate Mr. Pilli's Constitutional Rights.....9

1. Due Process Deprivation.....10

2. Opinions Expressed in the Reply were Protected First Amendment Speech.....12

a. Rule 8.2 has Nationwide Significance.....12

b. Expressions of Opinion Protected by the First Amendment.....12

c. Rule 8.2 is Limited to statements of Fact.....13

C. Factual Statements were neither False nor made with Reckless Disregard for Truth.....15

D. Defenses Based on Truth and Privilege.....16

1. Truth as Defense.....17
2. Privilege.....17

III. Conclusion & Prayer.....19

TABLE OF CITED AUTHORITIES

Federal Authorities

United States Supreme Court

Milikovich v. Lorain Journal Co., 497 U.S. 1, 20-21; 110 S.Ct. 2695; 111 L.Ed.2d 1 (1990).....15

In re Ruffalo, 390 U.S. 544, 550-51; 88 S.Ct. 1222; 20 L.Ed.2d 117 (1968).....11

Circuit Courts of Appeal

Standing C'ee on Discipline of U.S. District Court for Cent. Dist. of Cal. v. Yagman, 55 F.3d 1430, 1434 (9th Cir. 1995).....15,16

U.S. Dist. Ct. v. Sandlin, 12 F.3d 861 (9th Cir. 1993).....15

United States District Courts

McGrane v. Reader's Digest Ass'n, Inc., 822 F.Supp. 1044, 1048 (S.D.N.Y. 1993).....12

State Authorities

Virginia

Darnell v. Davis, 58 S.E.2d 68, 70 (Va. 1950).....17,18

Donohoe Const. Co., Inc. v. Mount Vernon Assoc's, 369 S.E.2d 857, 860 (Va. 1988).....18

In re Green, 11 P.3d 1078, 1085 (Colo. 2000).....13,14

Guide Pub. Co. v. Futrell, 7 S.E.2d 133, 133 (Va. 1940).....17

James v. Powell, S.E. 539, 544-45 (Va. 1930).....18

Jarrett v. Goldman, 2005 WL 1323115
(Va. Cir. Ct. May 31, 2005).....13

Jordan v. Kollman, 612 S.E.2d 203 (Va. 2005).....13

Kinney v. Williamscraft, Inc., 14 Va. Cir. 212;
1988 WL 619399, *1 (Va.Cir.Ct. Nov. 30, 1988)
(not designated for publication).....18

Massey v. Jones, 28 S.E.2d 623, 623 (Va. 1944).....17,18

Penick v. Ratcliffe, 140 S.E. 664, 667 (Va. 1927).....18

Pilli v. Virginia State Bar, 611 S.E.2d 389, 392
(Va. 2005).....2,3,6

Rosenberg v. Mason, 160 S.E. 190 (Va. 1931).....17

Saleeby v. Free Press, Inc., 91 S.E.2d 405, 407
(Va. 1956).....17

Watt v. McKelvie, 248 S.E.2d 826, 828-29
(Va. 1978).....17

Wise v. Commonwealth, 34 S.E. 453, 453
(Va. 1899).....5,8,9,18

Other State Courts

Chaves v. Johnson, 335 S.E.2d 97, 101-02 (1985).....12,13

Florida Bar v. Ray, 797 So.2d 556 (Fla. 2001).....15

Fuste v. Riverside Healthcare Assoc., Inc., 575 S.E.2d 858, 861 (2003).....12,13

Idaho State Bar v. Topp, 925 P.2d 1113 (Idaho 1996).....15

In re Endman, 33 N.Y. 2d 559, 347 N.Y.S. 2d 441, 301 N.E. 2d 426 (1973).....16

In re Disciplinary Action against Graham, 453 N.W. 2d 313 (Minn. 1990).....15

In re Petition for Disciplinary Action Against Nathan, 671 N.W.2d 578 (Minn. 2003).....15

Statutory Authorities

Va. R. Prof. Conduct 8.2.....3,5,9,12,13,14,15,16,17,18

United States Constitution, Article 1, § 12 (First Amendment).....5,6,12,13,14,16,19

Other:

AMER. HERITAGE DICTIONARY OF THE ENG. LANG., 4th Ed. (2000).....9

ROGET'S NEW MILLENNIUM THESAURUS (1st Ed. 2005).....10

OPINIONS AND ORDERS BY COURTS OR ADMINISTRATIVE AGENCIES

In re Dominick A. Pilli
Case No. T01-156966 (General Dist. Court for the 19th Judicial Dist. Dec. 11, 2001)
Appendix 198-202

Commonwealth of Virginia v. Dominick Pilli
Crim. No. M21766 (Fairfax County Circuit Court Feb. 19, 2002)
Appendix 211

In the Matter of Dominick Anthony Pilli
VSB Docket No. 02-051-2053(Virginia St. Bar Disciplinary Bd. Sept. 20, 2004)
Appendix 1-15

Pilli v. Virginia State Bar
611 S.E.2d 389 (Va. 2005)

STATEMENT OF THE BASIS FOR JURISDICTION

(i) The judgment or order sought to be reviewed was entered on April 22, 2005. This petition is being filed within 90 days after that date.

(ii) Mr. Pilli filed a motion for reconsideration for a stay which was denied on June 14, 2005.

(iii) No cross-petition for a writ of certiorari is filed under Rule 12.5.

(iv) The statutory provisions believed to confer on this Court jurisdiction to review on a writ of ertiorari the judgment and order in question include Rule 8.2 of the Virginia Professional Rules of Conduct and the First Amendment to the United States Constitution. Additionally, jurisdiction is proper in light of the issues of nationwide concern raised by this matter.

(v) No notifications are required under Rule 29.4(b) or (c).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

First Amendment to the United States Constitution

Rule 8.2 of the Virginia Rules of Professional Conduct:

> A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.

VA. R. PROF. CONDUCT 8.2.

CONCISE STATEMENT OF THE CASE

An Attorney successfully represented his Client, but in the process encountered clerical errors that led to miscommunications regarding a continuance, for which the Attorney was ordered to show cause. On the day of the show cause hearing, the Attorney appeared as ordered, passed the case on first call on what was that morning a lengthy docket, notified opposing counsel (and his Client, who accompanied him to court) that he needed to step out briefly to attend to another matter in a nearby courtroom but would return shortly.

Upon his return, he learned that his matter had been transferred to another courtroom on another floor, which, after he located it, he found closed. He learned that the judge in that courtroom had called the case, tried him in his absence, found him in contempt, and spoken of him so harshly that the Client was "scared" and tempted to cease retaining him.

Century-old precedent in the jurisdiction establishes that failure to be present under such circumstances cannot be contempt. Accordingly, the Attorney hastily – and emotionally – filed a Reply pointing out that the judge had erred in finding him in contempt and that to the extent that it concluded otherwise, the order contained falsehoods. Based on that Reply, the Respondent Bar Association instituted disciplinary proceedings, which were dismissed on all but one ground. Based on a finding of violation of the rule prohibiting impugning the integrity of the judiciary, a 90-day suspension of the Attorney's license was ordered. It is from this order that the Attorney now appeals.

REASONS TO ALLOW THE WRIT

The Reply on which the Attorney's sanctions were based contained statements that were either completely true, substantially true, or based on reasonable belief in their truth in light of established precedent and the existing facts.

Under such circumstances, a finding of willful contempt is unwarranted and would undermine the faith of attorneys nationwide in established local practices and courtesies, and it also would have a chilling effect on the First Amendment rights of all attorneys, who understandably would feel cautious about speaking candidly to members of the judiciary. Additionally, it would be contrary to the rule of absolute privilege accorded judicial proceedings.

APPENDIX

The information required to be included in the Appendix is voluminous and is presented in a separate volume.

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

COMES NOW DOMINICK A. PILLI ("Mr. Pilli") and hereby files this Petition for Writ of Certiorari (the "Petition") appealing from the judgment of the Virginia Supreme Court entered on April 22, 2005. In support of the Petition, Mr. Pilli respectfully states as follows:

I. FACTUAL BACKGROUND

A. The Chain of Events in Late 2001.

1. The (Successfully-Defended) Underlying Action.

On September 17, 2001, Walter Bordeaux (the "Client") retained Mr. Pilli to defend him in a traffic case in Fairfax County General District Court. *Joint Appendix ("Appx") 212.* Mr. Pilli successfully resolved the matter on January 17, 2002. *Appx 155.* However, he now has spent nearly four years battling to clear his good name based on what happened in the process as a result of unfortunate clerical errors in scheduling that setting.

2. The Continuance Request and Related Clerical Mistakes.

Mr. Pilli had a previously-scheduled trial hours away on the original October 16, 2001 trial date and filed a motion for continuance to the next date available for him, the Client, and the officer: January 17, 2002. *Appx 186, 217.* Local Court practice is to grant first-time continuance requests, and his secretary confirmed with a court clerk that the request would be granted and the motion continued to January 17, 2002. *Appx 217.* Nonetheless, District Judge Michael Cassidy ("Cassidy") didn't see paperwork noting that date, called the case on

October 16,[1] and issued a show cause summons when Mr. Pilli did not appear. *Appx 186, 188.*

3. Local Practice and Comedy of Errors Led to Missed Hearing.

Mr. Pilli appeared with his client for the show-cause hearing as scheduled on December 11 in Courtroom 1A. *Appx 125, 151, 163, 181-82, 188-89, 196-97, 202.* After passing the case, he notified the prosecutor that he needed to step out briefly to handle another matter in a nearby courtroom whose docket was significantly lighter. *Appx 151-52, 181-82, 213.* While he was out, the hearing was transferred to Cassidy's courtroom on another floor. Upon his return, Mr. Pilli found the new location, where the docket already had ended. *Appx 152-53, 181-82, 213.* The Client had notified Cassidy that Mr. Pilli was in another courtroom (*Appx 199*), but Cassidy tried him in his absence, found him in willful contempt, and rebuked him behind his back so harshly that the Client was "scared," upset, and considered hiring another attorney. *Appx 153-54, 161-63, 180-82, 198-99, 203.* Upon reviewing Cassidy's orders citing contempt of court, Mr. Pilli quickly filed the Reply in a hasty attempt to set the record straight before the holidays. *Appx 158, 161-64, 180; Pilli v. Virginia State Bar*, 611 S.E.2d 389, 392 (Va. 2005).

4. Court Refusal to Right Initial Wrong Caused Intense Frustration.

Thus, in a decidedly un-funny comedy of errors, a court clerical mistake led to an improper change of setting to a date on which a motion clearly stated a conflict. *See Appx 193-94.* The court clerk confirmed that the request was not forwarded to Cassidy. *Appx 196.* The continuance was approved, but the date was moved to the wrong date. *Appx 196.* Mr. Pilli's inability to appear while simultaneously appearing for a

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[1] Apparently, because the court did not have a January date available for the officer, the January setting was changed to the then-next available date for the *court*, which at that point was October 16.

previously-scheduled matter over 150 miles away led to the issuance of the contempt order culminating in these proceedings.

Cassidy reduced the sanction, but the injustice and indignation remain. *Appx 198-99, 203-04.* Four years later, he seeks to resolve what began as clerical error but exploded when he responded heatedly in frustration over not wanting to lose a client based on an inaccurate application of Virginia law to existing facts.

B. These Proceedings.

1. Alleged Misconduct and Punishment.

Years after Mr. Pilli successfully defended his Client, Respondent filed misconduct charges against him, ultimately dismissing all but one but concluding that he made statements with reckless disregard about Cassidy's qualifications and integrity in violation of Rule 8.2 of the Virginia Rules of Professional Conduct ("Rule 8.2"), focusing on the Reply to Cassidy's Supplemental Order (the "Reply"), in which he wrote that Cassidy had skewed facts, failed to tell the truth, and was "inaccurate, and wrong." *Appx 1-5, 12; Pilli*, 611 S.E.2d at 390. Respondent ordered Mr. Pilli's law license suspended for 90 days. *Id.* at 391; *Appx 13, 205-10.*

2. Procedural Posture.

From Respondent's order, Mr. Pilli appealed to the Virginia Supreme Court, arguing that statements in his pleadings were opinions (protected free speech) or were factual in nature with an objectively reasonable basis, and at any rate were not made with reckless disregard as to their truth or falsity. *Pilli*, 611 S.E.2d at 390.

The Virginia Court recognized that the pleadings responded to what likely were staff mistakes, but it nonetheless mandated a 90-day suspension of Mr. Pilli's law license, which

began on June 22, 2005, after having been stayed pending the appeal to the Virginia Court. *Id.* at 392.

It is from that Judgment that Mr. Pilli seeks relief from this Honorable Court.

II. ARGUMENT & AUTHORITIES

Mr. Pilli pursues this appeal strictly on principle. He asks only that the record be set straight to clarify that he did not act with willful or knowing contempt. That is the only finding possible under the facts and long-standing Virginia law – and it is of nationwide importance, impacting hundreds of thousands of attorneys, their staffs, and the courts in which they practice.

Disregarding even the initial errors that led to the contempt hearing, Mr. Pilli was sanctioned for missing that hearing when it was moved while he had stepped out briefly to a nearby courtroom – *after* he had appeared and passed it once. Century-old precedent squarely on point holds that an attorney cannot be held in contempt under these circumstances. *Wise v. Commonwealth*, 34 S.E. 453, 453 (Va. 1899). Mr. Pilli's response, distilled to its barest essence, merely pointed out the inaccuracy of Cassidy's conclusion that he acted contemptuously.

Besides chilling lawyers' First Amendment freedoms, it is easy to imagine the slippery slope down which the practice of law might slide if this contempt stands. Rather than relying on one another's integrity and common courtesy to efficiently cover numerous matters, lawyers nationwide would have to document every move for fear of a situation like this – squarely addressed by the *Wise* decision, to overturn which would be to cause a result undesirable to any member of the legal community.

A. Even Frustrated Response Failed to Rise to Level of Violating Rule 8.2.

Mr. Pilli was intensely frustrated when he first was ordered to show cause why he should not be held in contempt for failure to appear on an unscheduled trial date; then, having appeared at the appointed place and time for the contempt hearing, it was moved to another courtroom on another floor while he briefly stepped out to a nearby courtroom. His

expression of that frustration may not have been the most professional response to those events, but his candid expression was not untruthful, unethical, or sanctionable. *Appx 161-65.* Even to the extent that his expression of frustration might be objectionable, it was protected First Amendment expression. Mr. Pilli understandably was infuriated by the quagmire of clerical blunders he encountered:

- He timely requested, and his secretary confirmed, a continuance to January 17, 2002.
- When the case was called prematurely on October 17, 2001 and an order to show cause issued, he responded promptly and responsibly requested a hearing.
- When he appeared for that hearing and the case was called on the heavy docket, he passed, notified his Client and the prosecutor that he needed to step outside to attend to another matter in a nearby courtroom but would return, and left, returning shortly.

Mr. Pilli acted professionally and appropriately under local practice and long-established Virginia law – yet Cassidy called his behavior knowingly contemptuous, which was simply incorrect. Mr. Pilli thought it wrong for Cassidy to tell the public, legal community, and Client that he acted contemptuously; the Reply merely said so.

1. A Response to an Erroneous Allegation of Contempt was not Mr. Pilli's Best Work.

Mr. Pilli does not contend that the Reply exemplifies quality legal writing. *Appx 161-62, 164-65.* Rather, it was penned in a single draft immediately after receiving Cassidy's two orders added insult to injury in a series of frustrating misunderstandings stemming from what the Virginia Supreme Court has recognized was likely a staff error beyond Mr. Pilli's knowledge or control. *Pilli*, 611 S.E.2d at 392; *Appx 158, 180-81.*

Cassidy's order stated that Mr. Pilli had exhibited "lack of respect" for legal process and had knowingly acted contemptuously – which was incorrect under the existing facts and established Virginia law. *Appx 199.* The Reply sought to clarify this inaccuracy. *Appx 161-66, 180-81.* Thus, the Reply expressed understandable frustration in the face of a series of errors that wasted his time and undermined his Client's confidence. *Appx 162-63.* Mr. Pilli successfully defended his Client, but found Cassidy's focus turned to his own conduct, which Cassidy criticized in his absence to the point of scaring his client almost into firing him. *Appx 153:14-18, 154:5-14.* The Client decided to retain Mr. Pilli, who ultimately prevailed in defending him by obtaining a dismissal on the January 17, 2002 date. *Appx 155.* However, despite this swift and successful representation of his Client in the underlying matter, Mr. Pilli subsequently has been forced to live through its aftermath for four more years.

Mr. Pilli's frustration was evident when he could not convince Cassidy that he was in court as ordered. Respondent's opinion supports Mr. Pilli on the primary allegation of failure to appear in court. Cassidy's second order described his explanation as "shifting" (*Appx 203*), the opinion stated:

> The statements in that voicemail [*Appx 190-91*] to not materially conflict with the Coleman affidavit [*Appx 217*], and can be seen as an attempt by and attorney to make sense out of what should have been a very ordinary situation but which had instead spiraled out of control.

Appx 11. The evidence confirms that Mr. Pilli's messages were consistent. *Appx 205-210, 212-17.* The Reply was a hasty effort. The April 9, 2002, response contains the same substance but speaks in a more eloquent, professional manner. *Appx 190-91, 212-17.*

2. The *Wise* Decision and Context Justified Mr. Pilli's Frustration.

Respondent has recognized that the Reply was fashioned and submitted hastily "immediately" after Cassidy's contempt finding. *Appx 9*. Although Mr. Pilli is not proud of the Reply as an example of his best legal writing, the context within it was penned must be remembered. The Virginia Supreme Court established more than a century ago that an attorney is not guilty of contempt for his absence from a court setting under these circumstances. *Wise*, 34 S.E. at 453.

In the *Wise* case, as here, the attorney had simultaneous settings in two separate courts, for both of which he could not appear at the same time. *Wise*, 34 S.E. at 453. Like Mr. Pilli in December 2001, the *Wise* attorney was faced with juggling two simultaneous settings. *Id.* The Virginia Supreme Court noted that even if it were offensive not to keep one engagement to be present and proceed with a trial setting:

> it would have been a far more serious violation of his duty to his client and to the police court to abandon [the other setting]. He was, therefore, placed in the position, if the judgment of the county court be sound, of being punished for an election between inconsistent duties, whatever his choice might have been. The whole tenor and spirit of his conduct, when he found himself thus embarrassed, is marked, *not by a disposition to be guilty of a contempt of the jurisdiction of any court*, but disclosed a courteous and respectful consideration for each of them. The county court might very properly have pursued the one or the other of two courses: It might have continued the case to another day, or to a succeeding term, or it might have proceeded with the trial in the absence of plaintiff in error; but it could not punish for a contempt of court when it is manifest that no contempt of its authority was intended, and when the facts of the case are not only consistent with innocence

> of any offense, but are indeed inconsistent with any other hypothesis.

Id. at 453-54 (emphasis added). Mr. Pilli found himself in the not uncommon position of having to be in two places at once. Consistent with local (and nationally widespread) practice, he informed opposing counsel of the conflict, stepped out briefly to address the second matter, then returned to resolve the first. Faced with such "election between inconsistent duties," the scenario is identical to the *Wise* case, which the Virginia Supreme Court over one hundred years ago expressly held could not be marked "by a disposition to be guilty of a contempt of the jurisdiction of any court." *Wise*, 34 S.E. at 453. Cassidy's contempt finding not only was insulting under the circumstances, but legally incorrect. The Reply – albeit inartfully penned – should not be the basis for further contempt merely because it pointed out the judicial error in the contempt finding, which is what, boiled down to its barest essence, it did.

B. Basing Punishment on the Reply Would Violate Mr. Pilli's Constitutional Rights.

Mr. Pilli takes his profession and its integrity seriously. The Reply, while admittedly heated, cannot be read to have been made with reckless disregard for the truth in violation of Rule 8.2. Mr. Pilli's contention that he should not have been held in contempt under the circumstances is supported by local practice and by hundred-year-old precedent squarely on point. A conclusion that he knowingly acted contemptuously is simply wrong. The Dictionary defines "impugn" as "to attack as false or questionable; challenge in argument." AMER. HERITAGE DICTIONARY OF THE ENG. LANG., 4th Ed. (2000). Thus, the Reply could "impugn" Cassidy's contempt order. *Appx 166.* But speaking falsely – or any erroneous action – could render the same result – and truthfully pointing out these falsehoods should not subject the speaker to punishment. The relevant facts and the *Wise* precedent establish that Mr. Pilli was not knowingly contemptuous. Statements that Cassidy was "lying," wrong, or skewed the facts, while not complimentary,

nonetheless were correct if the facts and Virginia law were as Mr. Pilli understood them to be, since a statement that is false is "lying." ROGET'S NEW MILLENNIUM THESAURUS (1st Ed. 2005). These statements clearly were not willfully or knowingly contemptuous.

1. Due Process Deprivation.

Preliminarily, it should be noted that Respondent never formally took issue with the Reply:

> At the outset, it should be stated that the Board did not consider any statements made by Mr. Pilli in the Complaint that he filed with JIRC. Although exhibit 17 was admitted into evidence, it was felt that the statements therein were directed at the judicial complaint that Mr. Pilli was filing, which was otherwise privileged. Although he waived that privilege by also filing that complaint with the Virginia State Bar and with the Virginia State Bar Disciplinary Board, he did not publicize it publicly [sic].

Appx 11-12. However, Respondent's ten-page opinion addressed the relevant allegation:

> In that pleading filed in the clerk's office where Cassidy sits, [Mr. Pilli] attacked Judge Cassidy for inappropriate and inaccurate statements, failing to tell all of the facts and failing to tell the truth, skewing the facts, and exhibiting a lack of patience and tolerance. He further asserted that he "could not tolerate a Judge lying to this Court, to this Attorney, to the Judicial Review Commission and to the Virginia State Bar."

Appx 9, 211. Respondent never charged Mr. Pilli with misconduct relating to the Reply.

Respondent's *only* reference to an objectionable document was the statement that "On December 15, 2001, [Mr.

Pilli] filed a Complaint against Cassidy with the Judicial Inquiry and Review Commission in which he made false statements about the judge's qualifications and integrity." *Appx 1-5.* Those statements were based on Cassidy's alleged violation of the Code of Ethics for a judge as set out in the Virginia Judicial Inquiry and Review Commission Rules pamphlet. This Court has held that discipline for violations not alleged in a complaint violate due process because of lack of fair notice. *In re Ruffalo*, 390 U.S. 544, 550-51; 88 S.Ct. 1222; 20 L.Ed.2d 117 (1968). Fairness dictates that Mr. Pilli should not be disciplined for charges that were not part of the formally-served charge.

2. Opinions Expressed in the Reply were Protected First Amendment Speech.

a. Rule 8.2 has Nationwide Significance.

Because Rule 8.2 exists in some form in the rules governing attorneys' conduct in all US jurisdictions, this appeal is of significant nationwide concern, impacting hundreds of thousands of attorneys. Attorneys must feel free to candidly express their honest views regarding the facts, laws, and application of those laws in any legal proceeding. Such candor would seem particularly important in matters related to judicial integrity. The legal profession governs its own conduct. *See McGrane v. Reader's Digest Ass'n, Inc.*, 822 F.Supp. 1044, 1048 (S.D.N.Y. 1993). For that reason, candor in matters between and involving members of the legal community should be even more crucial than in proceedings involving simple defamation. The statements in the Reply were true, or at least based on Mr. Pilli's reasonable belief in their truth. In any event, they were not made with reckless disregard for their falsity. Such statements, believed to be true by the attorneys who utter them, should not be suppressed in any context – much less in the context of lawyers governing themselves.

b. Expressions of Opinion Protected by the First Amendment.

Pure expressions of opinion are protected by the First Amendment. U.S. Const. Article 1, § 12; *Fuste v. Riverside Healthcare Assoc., Inc.*, 575 S.E.2d 858, 861 (2003) (challenged statements provably false); *Chaves v. Johnson*, 335 S.E.2d 97, 101-02 (1985). Speech that does not contain provably false factual connotations, or statements that cannot be interpreted as stating actual facts about a person, cannot form the basis of a common law defamation action. *Fuste*, 575 S.E.2d at 861.

The Virginia Supreme Court has held that statements that are relative in nature and depend largely on the speaker's

viewpoint are expressions of opinion. *Fuste*, 575 S.E.2d at 861; *Chaves*, 335 S.E. at 101; *Jarrett v. Goldman*, 2005 WL 1323115 (Va. Cir. Ct. May 31, 2005) (not yet released for publication) (terminated employee's statement that former colleague "will screw up your accounts because he has screwed up many other accounts"). It recently reaffirmed that defamation cannot stand against a person who believes the statements at issue to be true. *Jordan v. Kollman*, 612 S.E.2d 203 (Va. 2005) (lack of actual malice in creating and paying or advertisements whose statements were believed defeated public figure's defamation cause of action).

Thus, the statements in the Reply could not provide a basis for a defamation claim against Mr. Pilli. Because Rule 8.2 contains express requirements that are identical to those for establishing a defamation claim, authorities governing defamation should be equally applicable here.

c. Rule 8.2 is Limited to Statements of Fact.

Rule 8.2's ethical prohibition applies to "statements," meaning statements of fact rather than opinions. *In re Green*, 11 P.3d 1078, 1085 (Colo. 2000) (attorney's statement to Judge accusing him of being "racist and bigot" and having "bent of mind" protected from disciplinary action as opinion). As here, the attorney in *Green* had successfully represented his client by winning his case when the focus shifted to his own conduct, with no impact on the client related to that conduct. *Green*, 11 P.3d at 1086-87.

The Colorado court emphasized the distinction between violating a disciplinary rule and the quality of an attorney's oral or written statements:

> By clothing [the attorney's] comments with the mantle of the First Amendment, we neither condone the tone of [his] letters nor agree with the conclusions that he drew. We note that the hearing board found that the trial judge "made every reasonable effort to be courteous and

> attentive to the Respondent." The hearing board specifically found that there was no evidence of any bias or prejudice on the trial judge's part. Our review of the record fully supports these findings. The question we decide in this case is whether the First Amendment allows us to discipline [the attorney] for expressing a contrary conclusion. We believe it does not. We therefore dismiss the charges that [the attorney] violated Colo. RPC 8.4.

Green, 11 P.3d at 1087.

Likewise, Mr. Pilli did not violate Rule 8.2 by expressing opinions in the Reply.

C. Factual Statements were neither False nor made with Reckless Disregard for Truth.

On the other hand, statements in the Reply that were entirely factual, or that were a mixture of law and fact, had an objectively factual basis and were neither false nor made with reckless disregard for their truth or falsity; thus, they by definition do not violate Rule 8.2.

An objective standard is used to determine whether a statement is false. *Florida Bar v. Ray*, 797 So.2d 556 (Fla. 2001) (standard is objectively reasonable factual basis); *In re Petition for Disciplinary Action Against Nathan*, 671 N.W.2d 578 (Minn. 2003) (falsity of statement about judge determined objectively); *In re Disciplinary Action against Graham*, 453 N.W.2d 313, 322 (Minn. 1990) (same); *U.S. Dist. Ct. v. Sandlin*, 12 F.3d 861 (9th Cir. 1993) (objective determination of whether attorney's statements had reasonable basis); *Idaho State Bar v. Topp*, 925 P.2d 1113 (Idaho 1996) (objective standard).

After being sanctioned, one attorney stated to the press that the judge had "a penchant for sanctioning Jewish lawyers" and that such actions evinced anti-Semitism. *Standing Comm. on Discipline of U.S. District Court for Cent. Dist. of Cal. v. Yagman*, 55 F.3d 1430, 1434 (9th Cir. 1995) (judge had sanctioned three other Jewish attorneys). The attorney wrote that this judge was "one of the worst judges in the United States," and took out an ad asking other sanctioned attorneys to contact him. The California Bar had not adopted the Model Rules, but its rules had an equivalent of Rule 8.2, under which the attorney was charged. *Yagman*, 55 F.3d at 1434. Applying an objective standard to determine whether his statements were entitled to constitutional protection, the court also stated that in order to subject an attorney to discipline, the statements must be capable of being proven true or false. *Yagman*, 55 F.3d at 1438. This is the same standard set forth by this Honorable Court in 1990. *Milikovich v. Lorain Journal Co.*, 497 U.S. 1, 20-21; 110 S.Ct. 2695; 111 L.Ed.2d 1 (1990). The court concluded that statements amounting to nothing more than "rhetorical

hyperbole" will not subject an attorney to discipline. *Yagman*, 55 F.3d at 1438.

Regarding the statement about the judge's penchant for disciplining Jewish attorneys and his anti-Semitism, the statement was a combined statement of fact (not sanctionable) and opinion (could subject attorney to disciplinary action only "if it could reasonably be understood as declaring or implying actual facts capable of being proved true or false"). *Yagman*, 55 F.3d at 1439.

The First Amendment protects expressions of opinion based on facts:

> Likewise, the statement that the judge was dishonest also was found not to be sanctionable: [The attorney's] remarks are thus statements of rhetorical hyperbole, incapable of being proved true or false. *Cf. In re Erdmann*, 33 N.Y.2d 559; 347 N.Y.S.2d 441, 441; 301 N.E.2d 426, 427 (1973) (reversing sanction against attorney who criticized trial judges for being "the whores who became madams")[.]

Yagman, 55 F.3d at 1440-41.

Here, as discussed above, the record of the proceedings below establish that Mr. Pilli appeared in court as instructed by the court clerk's office. *Appx 6-15*. Accordingly, any statement to the contrary was a falsehood. Thus, in filing the Reply asserting that statements regarding his absence from court constituted lying, Mr. Pilli did not violate Rule 8.2, since his statements had an objectively reasonably factual basis and were not false nor made with reckless disregard for truth or falsity.

D. Defenses Based on Truth and Privilege.

Mr. Pilli here hastens to note that he wishes only to set the record straight. These pleadings are meant only to clarify Mr. Pilli's frame of mind regarding the truth of the

statements in the Reply, which by definition accordingly would render the Reply not in violation of Rule 8.2. Because Rule 8.2 contains requirements identical to those for establishing defamation claims, defamation case law should apply here.

1. Truth as Defense.

Truth is a defamation defense. *Saleeby v. Free Press, Inc.*, 91 S.E.2d 405, 407 (Va. 1956) ("slight inaccuracies of expression" immaterial provided defamatory charge is substantially true); *Massey v. Jones*, 28 S.E.2d 623, 623 (Va. 1944) (truth is complete defense barring defamation action); *Guide Pub. Co. v. Futrell*, 7 S.E.2d 133, 133 (Va. 1940); *Rosenberg v. Mason*, 160 S.E. 190 (Va. 1931). Because the Reply would withstand defamation scrutiny for substantial truthfulness, it also should withstand scrutiny here, particularly given the truthful context in light of Virginia law regarding the legal impossibility of a contempt finding under the circumstances. *Saleeby*, 91 S.E.2d at 407.

2. Privilege.

Respondent has made clear that the statements with which it takes issue are limited to those contained in the Reply, which was privileged as a pleading and thus cannot serve as the basis for defamation claims. Again borrowing from defamation law, it is well settled in Virginia that "words spoken or written in a judicial proceeding that are relevant and pertinent to the matter under inquiry are absolutely privileged." *Darnell v. Davis*, 58 S.E.2d 68, 70 (Va. 1950). The reason for the rule of absolute privilege in judicial proceedings is to encourage unrestricted speech in litigation. *Watt v. McKelvie*, 248 S.E.2d 826, 828-29 (Va. 1978). "[T]he public interest is best served when individuals who participate in law suits are allowed to conduct the proceeding with freedom to speak fully on the issues relating to the controversy." *Id.* at 829. The defense of privilege is a matter of public policy, the idea being that by reason of a public or social interest entitled to protection, immunity is granted from liability for defamation that otherwise

would be actionable. *Kinney v. Williamscraft, Inc.*, 14 Va. Cir. 212; 1988 WL 619399, *1 (Va.Cir.Ct. Nov. 30, 1988) (not designated for publication).

The rule of absolute privilege accorded judicial proceedings is not limited to trials. *Donohoe Const. Co., Inc. v. Mount Vernon Assoc's*, 369 S.E.2d 857, 860 (Va. 1988); *Penick v. Ratcliffe*, 140 S.E. 664, 667 (Va. 1927). The rule "is broad and comprehensive, including within its scope all proceedings of a judicial nature. *Donohoe*, 369 S.E.2d at 860; *Penick*, 140 S.E. at 667. This includes "any proceeding for the purpose of obtaining such remedy as the law allows." *Donohoe*, 369 S.E.2d at 860; *Penick*, 140 S.E. at 667; *see also Darnell*, 58 S.E.2d at 71; *Massey*, 28 S.E.2d at 623-24, 626; *James v. Powell*, 152 S.E. 539, 544-45 (Va. 1930).

These proceedings fall within the realm of the absolute privilege accorded to statements in pleadings. The same rationale applies with equal or greater force in the context of proceedings involving the very integrity of the bar – not to mention an individual attorney's professional reputation and very livelihood. The nationwide impact of Rule 8.2 and other rules mirroring its terms establishes that its restrictions affect hundreds of thousands of attorneys across the United States, all of whom would find their candor with any tribunal significantly curbed if truthful statements or opinions in pleadings could lead to sanctions. In this context, it is even more critical that attorneys feel free to express their candid and straightforward views on all relevant matters.

Given Virginia law regarding the impossibility of contempt based on the facts here under *Wise*, the Reply simply expressed Mr. Pilli's earnest view regarding the falsehood that had been uttered by the court regarding his absence from the contempt hearing on December 11, 2001. While its specific language may have been hastily chosen and consequently inartful, the Reply thus should not subject Mr. Pilli to liability for contempt.

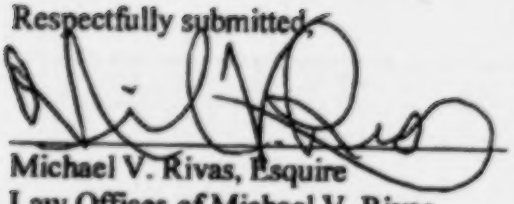
III. CONCLUSION & PRAYER

On December 11, 2001 Mr. Pilli appeared as ordered for a hearing. After passing on it, he notified the prosecutor and his Client that he needed to step out briefly to a nearby courtroom, which was standard practice in Fairfax County. But when he returned, he found that his Client and the matter had been moved to another courtroom on another floor. Virginia law establishes that an attorney cannot be in contempt of court under these circumstances; however, in his absence, Cassidy tried him, issued a contempt order against him, and spoke so negatively about him that his Client was scared to the point of questioning whether to retain him. Mr. Pilli hastily filed the Reply in an (albeit heated) attempt to correct Cassidy's erroneous conclusions. There is no basis in law or fact for concluding that Mr. Pilli acted contemptuously – much less in *willful* contempt. Punishing him for truthful statements or for expressing opinions regarding the application of long-standing law would have a chilling First Amendment impact on attorneys nationwide.

Mr. Pilli's suspension already has begun; the bell cannot be unrung. The damage to his business and reputation is wrong, unjustified, and something that only this Honorable Court can correct by reversing the incorrect conclusion below. Mr. Pilli seeks a writ of certiorari on principle, since there is no way to compensate him for losing ninety days of income or for sustaining serious damage to his professional reputation.

Mr. Pilli seeks nothing more than that the record be set straight, establishing that he neither acted in willful contempt of court, nor made comments in the Reply that were false or untrue. Accordingly, he respectfully requests that this Court reverse the decision of the Virginia Supreme Court.

Respectfully submitted,



Michael V. Rivas, Esquire
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Telephone 847-928-1936
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(2)

Supreme Court, U.S.
FILED

05-247 JUL 20 2005

OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DOMINICK A. PILLI, *Petitioner,*

versus

VIRGINIA STATE BAR, *Respondent*

ON APPEAL FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX

The information required to be included in the Appendix is voluminous and is presented in this separate volume.

For ease of reference, the Table of Contents reflects the starting page of each document in the Petition for Certiorari Appendix. Further, in the Petition for Certiorari, the same page numbers as were used in the Joint Appendix filed with the Virginia Supreme Court below are referenced in the Petition for Certiorari and cross-referenced herein in parentheses, just above the actual Table of Contents page number. The Virginia Supreme Court Joint Appendix page numbers are in parentheses above the US Supreme Court Appendix Table of Contents page number.

TABLE OF CONTENTS

EXHIBITS — PAGE NUMBER

1. Dominick A. Pilli v. Virginia State Bar,
   Record Number 042630
   (Order dated: April 22, 2005).....1

2. Dominick A. Pilli v. Virginia State Bar,
   Record Number 042630
   (Order dated: June 8, 2005).....14

3. Dominick A. Pilli v. Virginia State Bar,
   Record Number 042630
   (Order dated: June 14, 2005).....15

4. Dominick A. Pilli v. Virginia State Bar,
   Application Number 04A1062
   (Dated: June 21, 2005).....16

5. Dominick Anthony Pilli v. VSB
VSB Docket Number 02-051-2053
(Dated: June 23, 2005).....18

6. Respondent Determination & Order,
January 8, 2004 and September 20, 2004 **(p. 1-15)**.....21

7. Excerpt from Deposition of Michael
Cassidy **(p. 125)**.....48

8. Excerpts from Deposition of Dominick Pilli
(p. 151-155, 158, 161-166, 180-182).....50

9. Continuance Request **(p. 186)**.....81

10. Show Cause Summons **(p. 188)**.....82

11. Motion to Rehear **(p. 189)**.....83

12. Voice Mail Transcription **(p. 190-191)**.....84

13. Correspondence from Mr. Pilli to court clerk
Nancy Lake, Oct. 30, 2001 **(p. 193-194)**.....88

14. Correspondence from Lake to Mr. Pilli, Nov.
26, 2001 **(p. 196)**.....91

15. Continuance Request **(p. 197)**.....93

16. Fairfax County District Court Contempt Order,
Dec. 11, 2001 **(p. 198-199)**.....94

17. Docket Call Sheet noting presence and pass of
Show Cause hearing **(p. 202)**.....97

18. Fairfax County District Court Supplemental
Order, Dec. 12, 2001 **(p. 203-204)**.....98

19. Reply to Supplemental Order **(p. 205-210)**.....100

20. Circuit Court Order, Feb. 19, 2002 **(p. 211)**.....109

21. Response to Bar Complaint **(p. 212-217)**.....111

PRESENT: Hassell, C.J., Keenan, Koontz, Kinser, Lemons, and Agee, JJ., and Compton, S.J.

DOMINICK ANTHONY PILLI

v. Record No. 042630

OPINION BY JUSTICE BARBARA MILANO KEENAN

April 22, 2005

VIRGINIA STATE BAR

FROM THE VIRGINIA STATE BAR DISCIPLINARY BOARD

This case presents an appeal of right from a ruling of the Virginia State Bar Disciplinary Board (the Board). Dominick Pilli challenges the Board's order suspending his license to practice law in the Commonwealth for a period of 90 days based on its finding that Pilli violated Rule 8.2 of the Virginia Rules of Professional Conduct.

The Board found that Pilli made certain statements with reckless disregard as to their truth or falsity concerning the qualifications and integrity of a judge. The issue before us is whether the Board's finding is supported

Exhibit 1

by a reasonable view of the evidence and is in accordance with the law. See Williams v. Virginia State Bar, 261 Va. 258, 264, 542 S.E.2d 385, 389 (2001); Myers v. Virginia State Bar, 226 Va. 630, 632, 312 S.E.2d 286, 287 (1984).

In October 2001, Judge Michael J. Cassidy of the Fairfax County General District Court issued a "show cause" summons against Pilli charging him with failing to appear in court regarding a misdemeanor traffic offense for which Pilli was counsel of record. In response, Pilli filed a "motion to remove show cause," requesting dismissal of the summons based on his understanding that the traffic case had been continued to a date in January 2002. A few days later, Judge Cassidy heard argument on Pilli's motion, denied the motion, and set the show cause hearing and underlying traffic case for trial on December 11, 2001.

Pilli failed to appear before Judge Cassidy on December 11, 2001, when the show cause matter and traffic case were "called" in court. Judge Cassidy tried Pilli in his absence, found him in contempt of court, and

imposed a $250 fine. Later that afternoon, Pilli filed a motion to rehear, which he argued the next day. On December 12, 2001, Judge Cassidy refused to set aside his contempt finding, but suspended $150 of the fine. Judge Cassidy set forth his findings in two orders, which recited the proceedings in the matter.

On December 28, 2001, Pilli filed a "Reply to Supplemental Order of Judge Cassidy (December 12, 2001)" (the Reply). The stated purpose of the Reply was "to clarify the errors which Judge Cassidy has so negligently and carelessly, (a second time) failed to give consideration to, in these matters." Pilli accused Judge Cassidy of "skewing . . . the facts" and "fail[ing] to tell the truth." Pilli further stated, "I cannot tolerate a Judge lying to this Court, to this Attorney, to the Judicial Review Commission and to the Virginia State Bar. He is flat out inaccurate, and wrong." Pilli also threatened to use his "influence ... to have [Judge Cassidy] removed" from office.

Pilli appealed his contempt conviction to the circuit court, which found him guilty of the charge. The court sentenced Pilli to serve four days in jail.

In January 2004, a subcommittee of the Virginia State Bar (the Bar) certified four charges of misconduct against Pilli to the Board. The Bar charged Pilli with: (1) making a false statement of fact to a tribunal and offering evidence that the lawyer knows to be false, in violation of Rule 3.3; (2) committing a criminal or deliberately wrongful act that reflects adversely on the lawyer's fitness as a lawyer, in violation of Rule 8.4(b); (3) engaging in professional conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c); and (4) making a statement that the lawyer knows to be false or with reckless disregard to its truth or falsity concerning the qualifications or integrity of a judge, in violation of Rule 8.2.

In August 2004, the Board held a hearing on the four charges of misconduct. The Board ultimately

dismissed the charges relating to the alleged violations of Rule 3.3, Rule 8.4(b), and Rule 8.4(c), and found Pilli in violation of Rule 8.2.

The Board received evidence concerning Pilli's failure to appear in court on both October 16, 2001 and December 11, 2001, and Pilli's actions in drafting the Reply "pleading." The evidence presented by the Bar showed that Pilli initially had requested a four-month continuance of a misdemeanor traffic charge set for September 17, 2001. Based on the general district court's administrative procedures, the court clerk processing the request was only authorized to continue the case to the arresting officer's next available court date, October 16, 2001.

A continuance of the misdemeanor charge beyond the officer's first available date could be obtained only with the approval of a judge. Under the court's procedures, upon submitting his continuance request, Pilli would have been instructed to contact the clerk's office after September 18,

2001, to confirm whether a judge had agreed to the extended continuance and to obtain the new hearing date.

The traffic case was continued to October 16, 2001. Judge Cassidy testified that Pilli did not appear on that date or on December 11, 2001. Judge Cassidy further stated that when the show cause summons was called for trial on December 11, 2001, court personnel were unable to locate Pilli anywhere in the courthouse.

Pilli testified that his secretary verified with court personnel that the traffic case was continued to January 17, 2002. Pilli admitted that he did not appear in Judge Cassidy's courtroom on December 11, 2001, when the show cause summons was called for trial, because he was attending to another matter in a nearby courthouse. He stated that he had asked the prosecutor handling the show cause summons to "pass" the case until he returned.

According to Pilli, when he arrived back at the Fairfax County Court House, the courtroom to which his case was assigned was closed. Pilli stated that he wrote the

Reply "emotionally" because he was "upset" and "frustrated" with the manner in which Judge Cassidy handled the show cause matter.

The Board found by clear and convincing evidence that Pilli "made statements with reckless disregard concerning Judge Cassidy's qualifications and integrity." The Board further found that Pilli's Reply contained "numerous statements which are inappropriate, without basis in fact, and which clearly accuse Judge Cassidy of mendacity and incompetence." After considering Pilli's prior disciplinary record, which included two public reprimands and two private reprimands, the Board suspended Pilli's license to practice law for 90 days. Pilli appeals.

Pilli argues that the Bar failed to present clear and convincing evidence to support a violation of Rule 8.2. Pilli asserts that his statements in the Reply were "merely opinions," and that Rule 8.2 only applies to statements of fact. Pilli argues alternatively that any statements in the

Reply that were factual in nature had an objectively reasonable basis and were not made with reckless disregard as to their truth or falsity.

In response, the Bar argues that the statements Pilli made in his Reply establish by clear and convincing evidence that he violated Rule 8.2. The Bar asserts that Pilli's numerous accusations that Judge Cassidy lied clearly impugned the judge's integrity and were made with reckless disregard as to their truth or falsity.

We consider the parties' arguments under an established standard of review. In reviewing the Board's decision in a disciplinary proceeding, we conduct an independent examination of the entire record pertaining to the charge before us. Williams, 261 Va. at 264, 542 S.E.2d at 389; El-Amin v. Virginia State Bar, 257 Va. 608, 612, 514 S.E.2d 163, 165 (1999); Myers, 226 Va. at 632, 312 S.E.2d at 287. We consider the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the Bar, the prevailing party in the Board

proceeding. Williams, 261 Va. at 264, 542 S.E.2d at 389; El-Amin, 257 Va. at 612, 514 S.E.2d at 165; Gunter v. Virginia State Bar, 238 Va. 617, 619, 385 S.E.2d 597, 598 (1989).

We accord the Board's factual findings substantial weight and view those findings as prima facie correct. Williams, 261 Va. at 264, 542 S.E.2d at 389; El-Amin, 257 Va. at 612, 514 S.E.2d at 165; Myers, 226 Va. at 632, 312 S.E.2d at 287. Although we do not give the Board's conclusions the weight of a jury verdict, we will sustain those conclusions unless it appears that they are not justified by a reasonable view of the evidence or are contrary to law. Williams, 261 Va. at 264, 542 S.E.2d at 389; Myers, 226 Va. at 632, 312 S.E.2d at 287.

In reviewing the Board's determination that Pilli violated Rule 8.2, we observe that two separate elements must be established to prove a violation of that Rule. First, the Bar must establish that a lawyer made a statement about a judge or other judicial officer involving his or her

qualifications or integrity. Second, the Bar must prove that the statement was made with reckless disregard of its truth or falsity or with knowledge that the statement was false.

In the present case, we hold that the Board's conclusions are justified by a reasonable view of the evidence, and that the record supports the Board's determination that there is clear and convincing evidence that Pilli violated Rule 8.2. Pilli's own testimony established the first element of proof, namely, that he made statements concerning the qualifications or integrity of Judge Cassidy. At the hearing before the Board, the Bar's counsel asked Pilli, "Do you feel like you impugned the integrity of Judge Cassidy?" Pilli replied, "I think it would be questioned by what I wrote, yes."

Even in the absence of Pilli's concession, the record leaves no doubt that Pilli's remarks constituted an attack on Judge Cassidy's qualifications and integrity.. In the most vitriolic of terms, Pilli accused Judge Cassidy of lying, of "skewing" the facts, and of various acts of incompetence.

The very content of these accusations refutes Pilli's argument that he made objectively reasonable statements concerning Judge Cassidy's integrity and qualifications.

With regard to the second element of proof under Rule 8.2, the record establishes that Pilli made these statements about Judge Cassidy with reckless disregard as to their truth or falsity. Pilli responded to what likely was an administrative mistake made by either his staff or the court's staff by personally attacking Judge Cassidy. This personal attack accused Judge Cassidy of lying and other professional misconduct without any basis in fact and with utter indifference to the absence of such facts.

We find no merit in Pilli's contention that he did not violate Rule 8.2 because his statements about Judge Cassidy were merely statements of opinion, rather than of fact. Pilli's repeated accusations that Judge Cassidy lied were assertions of fact that were plainly within the scope of remarks proscribed by Rule 8.2. Thus, we need not address the issue whether statements of pure opinion, in the absence

of any factual allegations, are subject to disciplinary review under Rule 8.2.

Finally, we observe that these written statements by a member of the bar of this Commonwealth, published in the form of a "pleading" filed with a court, are more than merely a troubling reflection of the author's lack of professionalism. Such statements also may have the undeserved effect of diminishing the public's perception of the numerous lawyers and judges who so ably serve the citizens of this Commonwealth.

Because the present record supports the Board's determination that Pilli violated Rule 8.2, we will affirm the Board's order suspending Pilli's license to practice law in this Commonwealth for a period of 90 days. In light of the fact that Pilli's suspension was stayed during the period this appeal was pending, the suspension shall begin on June 22, 2005. Pilli shall notify, by certified mail, all clients for whom he is currently handling matters and all opposing attorneys and presiding judges in litigation. Pilli shall

make appropriate arrangements for the disposition of those matters presently in his care, in conformity with the wishes of his clients.

Affirmed.

---

* We also do not consider Pilli's argument that his statements are protected by the First Amendment, or his due process argument concerning the charges of misconduct, because he did not assign error on either basis to this Court. See Rule 5:17(c). These arguments are also barred because Pilli failed to raise either argument before the Board. See Rule 5:25.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 8th *day of* June, 2005.

Dominick Anthony Pilli,
Appellant,

Record No. 042630
VSB Docket No. 02-051-2053

against

Virginia State Bar,
Appellee.

Upon an appeal of right from an order entered by the Virginia State Bar Disciplinary Board.

On May 10, 2005 came the appellant, in proper person, and filed a motion to defer issuance of the mandate in this case.

Upon consideration whereof, the Court denies the motion.

A Copy, Teste:

\s\ Ruth L. Harrington

Clerk

Exhibit 2

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 14th *day of* June, 2005.

Dominick Anthony Pilli,
Appellant,

Record No. 042630
VSB Docket No. 02-051-2053

against

Virginia State Bar,
Appellee.

Upon an appeal of right from an order entered by the Virginia State Bar Disciplinary Board.

On June 10, 2005 came the appellant, in proper person, and filed a motion for reconsideration of his request to stay the mandate in this case pending an appeal to the Supreme Court of the United States.

Upon consideration whereof, the Court denies the motion.

A Copy, Teste:

\s\ Ruth L. Harrington

Clerk

Exhibit 3

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter

Clerk of the Court

(202) 479-3011

June 21, 2005

Mr. Dominick A. Pilli
10560 Main Street
Suite 308
Fairfax, VA 22030

Re: Dominic A. Pilli
v. Virginia State Bar
Application No. 04A1062

Dear Mr. Pilli:

The application for a stay of mandate pending the filing and disposition of the petition for certiorari in the above-entitled case has been presented to The Chief Justice, who on June 21, 2005 denied the application.

This letter has been sent to those designated on the attached notification list.

Exhibit
4

Sincerely,

William K. Suter, Clerk

By \s\ Troy D. Cahill
Troy D. Cahill
Staff Attorney

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
VSB DOCKET NO. 02-051-2053
DOMINICK ANTHONY PILLI

ORDER OF SUSPENSION

It appearing that the license of Dominick Anthony Pilli to practice law in the Commonwealth of Virginia was suspended for 90 days effective October 1, 2004, by Order of the Virginia State Bar Disciplinary Board; and

It appearing further that the Respondent appealed the suspension to the Virginia Supreme Court and filed a petition to stay the suspension, which petition was granted by the Virginia Supreme Court effective September 24, 2004; and

It further appearing that the Virginia Supreme Court entered an Order dated April 22, 2005, affirming the decision of the Disciplinary Board, and instructing the Disciplinary Board to impose a ninety (90) day suspension of Dominick Anthony Pilli's license to practice law; and

It further appearing appropriate to do so;

It is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is suspended

Exhibit
5

for a period of ninety (90) days effective June 22, 2005; and

It is further ORDERED that pursuant to the provisions of Part Six, Section IV, Paragraph 13.M of the Rules of the Supreme Court of Virginia, Dominick Anthony Pilli shall forthwith give notice by certified mail, return receipt requested, of the Suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. He shall also make appropriate arrangements for the disposition of matters then in his care in Conformity with the wishes of his client. He shall give such notice within fourteen (14) days of the effective date of the Suspension order; make such arrangements as are required herein within forty-five (45) days of the effective date of the Suspension order. The Attorney shall furnish proof to the bar within sixty (60) days of the effective date of the Suspension order that such notice have been timely given and such arrangement required herein shall be determined by the Disciplinary Board, which may impose sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that an attested copy of this Order be mailed to Respondent by certified mail, return

receipt requested, at his address of record with the Virginia State Bar, Suite 308, 10560 Main Street, Fairfax, VA 22030, and a copy by regular mail to Noel D. Sengel, Senior Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, VA 22314-3133

ENTERED THIS ORDER THIS 23rd
DAY OF JUNE, 2005

FOR THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

\s\ Barbara Sayers Lanier
Barbara Sayers Lanier
Clerk of the Disciplinary System

VIRGINIA:

BEFORE THE FIFTH DISTRICT COMMITTEE
SECTION I
OF THE VIRGINIA STATE BAR

IN THE MATTER OF DOMINICK ANTHONY PILLI, ESQUIRE
VSB Docket Number 02-051-1053

SUBCOMMITTEE DETERMINATION
(CERTIFICATION)

On September 9, 2003, a meeting in this matter was held before a duly convened subcommittee of the Fifth District Committee Section I consisting of Sean P. Kelly, Esquire, Stephen A. Wannall, and Richard J. Ruddy, Jr., Esquire, presiding. Noel D. Sengel, Esquire, Senior Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, §IV, ¶ 13(G)(l)(b) of the Rules of Virginia Supreme Court, a subcommittee of the Fifth District Committee Section I of the Virginia State Bar hereby serves upon the Respondent the following Certification:

Exhibit 6

I. STATEMENT OF FACTS AND NATURE OF MISCONDUCT

1. At all times relevant hereto, Dominick Anthony Pilli, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On August 11, 2001, Walter Bordeaux was charged with leaving the scene of an automobile accident. A trial was scheduled in the case for September 18, 2001 in Fairfax County General District Court. On September 17, 2001, the Respondent entered his appearance on behalf of Mr. Bordeaux and filed a continuance request with the Clerk's Office. The citing police officer had two available dates, October 16,2001 and January 17, 2002. The Respondent requested that Mr. Bordeaux's trial be continued until January 17, 2002, claiming he had an out-of-town court appearance on October 16,2001. By letter dated September 26, 2001, the Respondent informed his client that the date of his trial had been changed to January

17,2001 *(sic)*. Local procedures require that attorneys confirm with the clerk's office whether the continuance has been granted and, if so, to what date. The motion for continuance was granted, but only until October 16, 2001, not January 17, 2002. Mr. Bordeaux was noticed to appear for October 16, 2001.

3. On October 16, 2001, neither the Respondent nor his client Mr. Bordeaux appeared in court for the trial. The Respondent had told Mr. Bordeaux he did not need to appear. The presiding judge, the Honorable Michael J. Cassidy issued a Show Cause for contempt of court against the Respondent. Both the Show Cause hearing and Mr. Bordeaux's trial were scheduled for December 11, 2001. On October 18, 2001, the Respondent filed a motion to remove the show cause claiming he, "had no mention that this matter was not continued."

4. On nine separate occasions, beginning on October 18, 2001, the Fairfax County Sheriff attempted to serve the Respondent with the Rule to Show Cause, but the

Respondent would not make himself available for service. On October 22, 2001, the Respondent's motion to remove the show cause against him was heard and denied.

5. On November 16, 2001, the Respondent filed a request for continuance of the matters set for December 11, 2001. He again requested that they be rescheduled for January 17, 2001 *(sic)*. Judge Cassidy denied the Respondent's request because the Respondent had stated no reason for the continuance request.

6. On December 11, 2001, the Respondent failed to appear before Judge Cassidy for the Show Cause hearing. Judge Cassidy sent his bailiff to learn whether or not the Respondent was in the building. The bailiff did not find the Respondent but did find the Respondent's client, Mr. Bordeaux, and brought him to Judge Cassidy's court. Mr. Bordeaux informed the Court that he had seen the Respondent in the court building before 9:30 a.m. that morning and believed the Respondent was in another traffic courtroom. However, the Respondent had not left a note

with the file or informed any court personnel that he would be in another courtroom. The Respondent never appeared in Judge Cassidy's court that day.

7. Judge Cassidy found the Respondent in contempt and fined him $250.00, to be paid on or before January 11, 2002.

8. Later in the day on December 11, 2001, the Respondent filed a "Motion to Rehear and Reconsideration" in response to Judge Cassidy's order. In the motion, he claimed he had had other matters scheduled in court that day, and had been attending to them when he was supposed to have appeared in Judge Cassidy's court. He also noted that he had not been served with the Rule. The court agreed to rehear the matter on December 12, 2001.

9. On December 12, 2001, the Respondent was given an opportunity to show cause why he should not have been held in contempt. He informed the court that his former secretary could testify that she had checked with the

Judges' Chambers and confirmed that Mr. Bordeaux's trial had been continued until January 17, 2002. However, the secretary had been unavailable to appear on the Respondent's behalf on December 11, 2001 and was still unavailable to appear on December 12, 2001. The Respondent had not requested the issuance of a subpoena for her appearance for either date. The Court found it difficult to reconcile the Respondent's testimony on December 12, 2001 with his earlier statement that "...his office had presumed the case had been continued and that he was unable to determine if an unavailable, new secretary had gotten a call back on the continuance." The Court affirmed its finding of contempt and suspended $150.00 of the $250.00 fine. At the conclusion of the hearing, the Respondent stated he was going to file an "appeal" with the "Judicial Inquiry Commission."

10. On December 15, 2001, the Respondent filed a Complaint against Judge Cassidy with the Judicial Inquiry and Review Commission in which he made false

statements about the judge's qualifications and integrity. The Respondent also appealed Judge Cassidy's ruling to the Fairfax County Circuit Court. The Circuit Court found the Respondent in contempt, and sentenced him to four days in jail.

The Subcommittee believes that such conduct constitutes misconduct in violation of the following Disciplinary Rules of the revised Virginia Code of Professional Responsibility:

RULE 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal.

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

RULE 8.2 Judicial Officials

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity

concerning the qualifications or integrity of a judge or other judicial officer.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation.

II. CERTIFICATION

Accordingly, it is the decision of the subcommittee to certify the Charges of Misconduct to the Virginia State Bar Disciplinary Board.

THE FIFTH DISTRICT COMMITTEE SECTION I OF THE VIRGINIA STATE BAR

By: \s\ Richard J. Reddy, Jr.
Chair/Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this 8th day of January, 2004, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED), a true and correct copy of the foregoing Subcommittee Determination (Certification) to the Respondent, Dominick Anthony Pilli, Esquire, at 10560 Main St., Suite 308, Fairfax, VA 22030, his last know address of record with the Virginia State Bar, and by first class mail, postage prepaid , to Respondent's Counsels, Paul D. Krause, Esquire and Lynne C. Kemp, Esquire, at Wilson Elser, Moskowitz, Edelman & Dicker, LLP, The Colorado Building, 1341 G. St., NW, Fifth Floor, Washington, DC 20005.

\s\ Noel D. Sengel
Noel D. Sengel

VIRGINIA: BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF:
DOMINICK ANTHONY PILLI
VSB Docket No. 02-051-2053

ORDER

THIS MATTER came before the Virginia State Bar Disciplinary Board for hearing pursuant to a Subcommittee Determination (Certification) issued January 8, 2004, certifying charges of misconduct against Respondent for hearing before the Board. The charges were duly noticed for hearing June 25, 2004, and subsequently continued for hearing on August 27, 2004. The matter was heard on that date by a panel of the Board, consisting of Karen A. Gould, Chair, Dr. Theodore Smith, lay member, William C. Boyce, Joseph F. Lassiter, Jr. and H. Taylor Williams, IV. Each member of the panel was requested by the Chair to state whether he was aware of any personal or financial interest which would affect or reasonably be perceived to affect his

ability to be impartial in this case, all members responding in the negative. The Virginia State Bar (the "Bar") was represented by Noel D. Sengel, Senior Assistant Bar Counsel. Timothy J. Battle, Esquire, appeared on behalf of the Respondent, Dominick Anthony Pilli, who was present at the proceedings.

The Bar then moved into evidence a binder containing nineteen pre-numbered exhibits, all but one of which were admitted without objection. Respondent objected to the admission of Exhibit 17, which consisted of a letter addressed to the Bar and to the Board dated December 28, 2001, whereby Respondent transmitted to the addressees a copy of a judicial complaint which he had that day filed with the Judicial Inquiry and Review Commission, on the grounds that the complaint was privileged pursuant to Virginia Code Section 2.1-37.13. The panel having found that the privilege was waived by the transmission of the complaint to the Bar and to the Board, the objection was overruled, and the entire binder of exhibits was admitted as

Bar Exhibit 1. The Bar objected to Respondent's renewal of his motion to call a witness not listed on his pretrial exhibit list, which motion had been sustained by the Board Chair in a pre-hearing conference. In accordance with the rules of these proceedings, the panel retired to consider the motion and the ruling, whereupon the Bar had the clerk inform the panel that it was withdrawing its objection. During the proceedings, the Bar offered for admission an Affidavit signed by Molly Coleman, which was admitted without objection as Bar Exhibit 2. All references in this opinion shall be to the numbered exhibits in Bar Exhibit 1, and Bar Exhibit 2 will be identified as the Coleman Affidavit.

SUMMARY OF CASE

The events leading to this bar complaint were variously described in opening statements as a case of "making a mountain out of a mole hill" (bar counsel) and as a case of "the dog ate my homework" (counsel for Respondent). Both statements accurately describe the situation.

Respondent was issued a criminal show cause summons by Judge Michael Cassidy of the Fairfax County General District Court arising from Mr. Pilli's failure to appear in court on October 16, 2001, for trial of a hit and run accident charge in which he was defense counsel of record. Mr. Pilli was perhaps understandably operating under the assumption that he had continued the matter from the original trial date to a date other than October 16, since he had filed a motion for continuance in which he informed the court that he was not available on that date and provided January 17 as the police officer's next available date. Indeed, he informed his client by letter dated September 26, 2004, that the court date had been continued to January 17. There was a dispute as to whether Mr. Pilli's office confirmed with the court that the case had been continued to the January 17 date that he had requested. The court overlooked the continuance motion and continued the case to October 16.

The Show Cause summons against Mr. Pilli was set for trial on December 11, 2001. Learning of the issuance of the summons, Respondent attempted to rectify the situation with the court informally. Informed by court order entered October 18, 2001, that the case would be dealt with on December 11, Mr. Pilli appeared in the courthouse on that date. Finding the case on the docket in a courtroom other than Judge Cassidy's courtroom, Respondent checked in with the clerk and asked that the case be dropped down due to the long docket in that courtroom and Mr. Pilli's need to appear briefly on that same day in the Fairfax City General District Court, a common practice in Fairfax. During Mr. Pilli's absence, the case was transferred to Judge Cassidy's courtroom at his request, and he was tried in absentia, held in contempt and fined $250.00. Shortly thereafter Respondent returned to the Fairfax County courthouse, discovered that the case had been transferred to Judge Cassidy's courtroom. Learning of the conviction, he filed a motion to rehear, which was heard the next day. At that

time Judge Cassidy suspended all but $100.00 of the fine, but the conviction stood.

By that time Mr. Pilli and Judge Cassidy were clearly at odds. In the court's order of December 11 (Bar Ex. 13), which found Mr. Pilli in contempt, Judge Cassidy referred to the original continuance motion filed by Mr. Pilli, and seemed to have no problem with the fact that the case was continued to a date that Respondent had advised the court was unavailable for him. The order went on to state that Mr. Pilli failed to make himself available for service of the contempt citation. The order stated that Mr. Pilli had exhibited a disregard for the scheduling practices of the court, failed to make himself available for service of the show cause, and failed to appear for the show cause hearing. Following the rehearing on December 12, Judge Cassidy issued a Supplemental Order (Bar Ex. 15), in which he excused the failure to appear at the show cause hearing on December 11 and suspended $150.00 of the previously imposed fine. Judge Cassidy testified before the

Board, and stated that he was concerned about what he felt were "shifting explanations" that he was receiving from Mr. Pilli. Originally, according to Judge Cassidy, Mr. Pilli advised the court that he failed to appear because he "presumed" the case had been continued to January 17, and that he was unable to determine whether a newly employed secretary had gotten a call back on the continuance. (Bar Ex. 8). Subsequently, at the hearing on December 12, Mr. Pilli indicated that his secretary of two years had confirmed the continuance date. (The September 26 letter to the client bears the initials of mqc as typist, and the Affidavit of Mollie Coleman, the two year secretary, offered as an exhibit by the Bar and admitted into evidence, stated that the Clerk's Office informed her that the matter had been continued to January 17. Ms. Coleman did not testify at the show cause hearing before Judge Cassidy, but did testify at the appeal of the show cause summons to circuit court.)

Immediately following the December 12 show cause rehearing before Judge Cassidy, Respondent

proceeded to lambast Judge Cassidy. Respondent filed a "Reply to Supplemental Order of Judge Cassidy" (Bar Ex. 16), a pleading not described in the rules of procedure. In that pleading, filed in the clerk's office where Judge Cassidy sits, Respondent attacked Judge Cassidy for inappropriate and inaccurate statements, failing to tell all of the facts and failing to tell the truth, skewing the facts, and exhibiting a lack of patience and tolerance. He further asserted that he "could not tolerate a Judge lying to this Court, to this Attorney, to the Judicial Review Commission and to the Virginia State Bar." Respondent made similar comments in the complaint that he filed with JIRC that same date, referring to the judge as the "Honorable" Judge Michael Cassidy or just "Cassidy". The JIRC complaint was filed not only with the Commission, but also with the Bar and the Disciplinary Board.

ISSUES

Respondent was charged with the following ethical violations:

RULE 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal.

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

RULE 8.2 Judicial Officials

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation.

DECISION

At the conclusion of the Bar's evidence, Respondent moved to strike the evidence. Following argument, the Board retired to consider the motion. Upon due deliberation, the panel determined that there was no evidence that Mr. Pilli had made a false statement of fact to a tribunal, offered evidence which he considered to be false, or engaged in professional conduct involving dishonesty, fraud, deceit or misrepresentation. Accordingly, the Rule 3.3 and Rule 8.4(d) violations were stricken. The Bar had admitted the Coleman Affidavit into evidence, and there was no evidence to rebut Ms. Coleman's testimony in the affidavit that she had called the Fairfax County clerk's office and confirmed the continuance to January 17. The basis of the allegation that Mr. Pilli had misrepresented anything would therefore have to lie on Judge Cassidy's testimony that Mr. Pilli's explanation had shifted from his earlier statements to the court. The earlier statements are contained in a typed transcript of a voicemail message (Bar Ex. 8) that Respondent left with Judge Cassidy on October

22, six days after the hearing that he failed to attend. The statements in that voicemail do not materially conflict with the Coleman affidavit, and can be seen as an attempt by an attorney to make sense out of what should have been a very ordinary situation but which had instead spiraled out of control.

Following the conclusion of all of the evidence, counsel argued the remaining two issues. Those issues boiled down to whether the imposition of the criminal contempt order (Bar Ex. 13 and 15) and/or the failure of Mr. Pilli to accept service of the contempt summons constituted a criminal or deliberately wrongful act that reflects adversely on the lawyer's fitness as a lawyer, and whether statements made by Mr. Pilli constituted statements made with reckless disregard as to their truth or falsity concerning the integrity of Judge Cassidy.

At the outset, it should be stated that the Board did not consider any statements made by Mr. Pilli in the Complaint that he filed with JIRC. Although Exhibit 17

was admitted into evidence, it was felt that the statements therein were directed at the judicial complaint that Mr. Pilli was filing, which was otherwise privileged. Although he waived that privilege by also filing that complaint with the Virginia State Bar and with the Virginia State Bar Disciplinary Board, he did not publicize it publicly. Also, the Board did not find the evidence to be sufficient to establish that Mr. Pilli had avoided service of the show cause summons. In fact, he had filed a motion with the court concerning the summons, which arguably subjected him to the jurisdiction of the court, and he did in fact appear in court on the return date and reported to the clerk in the court to which the case was assigned on the docket.

The conviction of criminal contempt is troubling. On appeal, the circuit court found Mr. Pilli guilty for the reasons stated in the orders entered by Judge Cassidy (Ex 13 and 15). Exhibit 13 makes explicit findings that Mr. Pilli exhibited disregard for the scheduling practices of the court and failed to make himself available for service of the

summons. The conviction by the circuit court was not appealed to the court of appeals, and stands as a criminal conviction. However, Mr. Pilli was not even charged with the failure to accept service of the summons. Furthermore, it is clear from the record that Respondent followed the procedures of the court in requesting the continuance, the case was continued to a date he did not have available, and he genuinely believed that the case had been continued to a later date. Accordingly, we fail to find clear and convincing evidence that Mr. Pilli has violated Rule 8.4(c).

The Board finds by clear and convincing evidence that Respondent made statements with reckless disregard concerning Judge Cassidy's qualifications and integrity, and has accordingly violated Rule 8.2. The "Supplemental Reply" (Bar Ex. 16) that Mr. Pilli filed in the clerk's office on December 12, 2001, contains numerous statements which are inappropriate, without basis in fact, and which clearly accuse Judge Cassidy of mendacity and incompetence.

SANCTIONS

After finding Respondent guilty of having violated Rule 8.2, the panel reconvened to hear evidence concerning sanctions. A copy of Mr. Pill's prior disciplinary record was admitted into evidence. Thereupon, the Board retired to consider the appropriate sanction. Mr. Pilli's prior disciplinary record consisted of two private reprimands and two public reprimands, including one prior case in 1998 involving a contempt citation. See Moore v Hinkle, 259 Va. 479,485; 527 S.E.2d 419,422 (2000). In addition, Mr. Pilli was held in contempt of court by Judge Mark Simmons of the Fairfax City General District Court on December 27,2001, and was again found guilty on appeal to the Circuit Court of Fairfax County by order entered June 11, 2002. With due regard to Respondent's prior disciplinary record, the panel unanimously determined that Respondent's license to practice law in the Commonwealth of Virginia should be suspended for a period of ninety (90)

days, with the effective date of the suspension to be October 1,2004.

It is accordingly, ORDERED that, pursuant to Part 6, Section IV, Paragraph 13.1(5)(c)(2) of the Rules of the Supreme Court of Virginia, the license of Dominick A. Pilli to practice law in the Commonwealth of Virginia be, and the same hereby is, SUSPENDED effective October 1, 2004.

It is further ORDERED that, as directed in the Board's August 27,2004, Summary Order in this matter, Respondent must comply with the requirements of Part Six, §IV, ^f 13 (M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then

in his care in conformity with the wishes of his client. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is FURTHER ORDERED that the Clerk of the Disciplinary System shall send an attested and true copy of

this Order to Respondent by certified mail, return receipt requested, at his address of record with the Virginia State Bar, 10560 Main Street, Suite 308, Fairfax, Virginia 22030, and to Noel D. Sengel, Senior Assistant Bar Counsel, Virginia State Bar, 100 N. Pitt Street, Suite 310, Alexandria, Virginia 22314-3133.

The proceedings in this matter were reported by Donna T. Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

The Clerk of the Disciplinary System shall assess costs pursuant to Rules of the Supreme Court, Part 6, Section IV, Paragraph 13.B.8.C.

So ordered this 20th day of September, 2004.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: \s\ Karen A. Gould, Chair
Karen A. Gould, Chair

A Copy Teste:

\s\ Barbara Sayers Lanier
BARBARA SAYERS LANIER
CLERK OF THE DISCIPLINARY SYSTEM

the --

A Underlying .

Q -- underlying charge being in Judge O ' Flaherty ' s courtroom?

A Yes.

Q All right. Now, take a look at the third page of VSB 14, the computerized docket sheet. At least 7 that ' s what I think it is .

A Right .

Q Does that change things at all? It seems to suggest that Mr. Pilli's show cause was scheduled for 1A?

A I would not have recalled that it was in there unless the paperwork was brought up to my

Exhibit 7

courtroom, It was there. Obviously it was scheduled for the other courtroom.

Q All right. So what you recall is you sent a message down to LA to have the other case sent up as well?

A Right .

Q About what time was that, if you recall?

A It would have been about 11:15 or 11:30.

Q And what time would you have called it?

A Well, I probably -- I think I would have called it earlier with it not being there, I assume.

about one block away in the Fairfax City Court?

A I did.

Q And what was -- I can see a small piece of this docket in part of Exhibit 14. Did you -- what, if anything, did you do to notify a clerk in Courtroom 1A?

THE CHAIR: Mr. Battle, I'm sorry to interrupt, but let me also clarify. The Judge in his supplemental order vacated the contempt on the basis of failure to appear on December 11th after hearing Mr. Pilli's explanation on December 12th. So I don't think that you need to go into that in terms of --

Exhibit 8

MR. BATTLE: I'll try to move on. It was a significant portion of Judge Cassidy's testimony today, so I wanted to try to move quickly.

BY MR. BATTLE:

Q Were you in Courtroom 1A that day?

A Yes, I was.

Q Did you tell one of the clerks that you were or ask permission to go over across the street to Fairfax City Court?

A Yeah. I passed the case with whoever the standing Commonwealth was at the time. And the way you do that, they put it on a pad. They write either the defense attorney's name down, the case, and I had

to cover that because if you jump back one hoop, I had asked the judge -- although I didn't say it on the form that I was trying to call him earlier, that I needed to continue these matters from December 11th because I had a conflict in the City. I realized the seriousness of the rule to show cause and wanted to give my undivided attention to that, but because of the City conflict and not being able to get the continuance, I had to cover the City and the rule in Courtroom 1A, so I had Mr. Bordieux wait there while I passed that case and told him to stay there, and then I went over to the City and did the City case.

Q Was the docket in Courtroom 1A long?

A It was very long. There were a lot of

cases in there. Usually there's two to three hundred cases a day in Fairfax County Courthouse. That's not uncommon.

Q Was the Fairfax City docket comparatively lighter?

A It was. Because they just have one, one or two days they do court on the City docket. It was very small docket.

Q When you came back, sir, what was going on? Did you return to Courtroom 1A?

A I returned to Courtroom 1A. Court was

still in session. And as I opened the door and walked down the side, I had went to ask Judge O'Flaherty what happened with the case because Mr. Bordieux wasn't there. And what I heard was, Mr. Pilli you have been held in contempt of court for not showing up in Judge Cassidy's courtroom up in 2B.

Q Okay. And what did you do after that, sir?

A I went up to look for the court case in Courtroom 2B, but the court was closed. Everything was shut down.

Q Did Mr. Bordieux report anything to you at that time?

A Yeah. Mr. Bordieux came outside of the, to the corridor and he was scared. He said, you know, this judge is basically saying he's going to hold you in contempt, and he said several other things to me that he was.

MS. SENGEL: Again, I object to him testifying as to what someone else said.

THE CHAIR: Well, and I agree that it is definitely hearsay, and it's not being -- admitting it for the truth?

MR. BATTLE: Yes

25 THE CHAIR: Well, I chink

we'll listen to

it, but take it under consideration of the fact that it is hearsay.

MR. BATTLE: All right.

BY MR. BATTLE:

Q Did your client consider at that point moving to a different attorney because of the comments the judge made?

A He liked my reputation, but he was very scared. He said this scares me because I want you to be my attorney, but what he said scares me.

Q Okay. Did you, did you continue to represent Mr. Bordieux on the leaving the scene of an accident charge?

A Yes, I did.

Q And did you -- all right. Did you actually appear in court before Judge Cassidy on the following day, December 12th?

A Yes, because that was the -- I'll look at the exhibit.

Q The date of the second order?

A Yeah, the day after.

Q And was your -- was Mrs. Coleman available on that day?

A Mrs. Coleman was not available. She was sick three days that week, but definitely the two

court dates .

Q All right.

A She had planned to come, but she just did not make it. I know she was sick that week.

Q Did you, did you complete the representation of Mr. Bordieux before you filed anything else concerning your own situation?

A Yes, I did.

Q All right. And what was the result of Mr. Bordieux?

A Mr. Bordieux "s case was noil prosed.

Q Now, did there come a time when you appealed the contempt to the Circuit Court of Fairfax County?

A There was a time when I did that .

Q Okay. Let's back up a second on the amounts involved.

Was there ever anything on the record or in any order where Judge Cassidy said to you a $50 donation to charity will make this go away?

A When I did my motion for reconsideration, there was only one other attorney in the courtroom.

Q Who was that?

A Robert Cunningham. And the Judge asked me to approach the bench. I'd never had a problem with

the reply, which is Exhibit No.

THE CHAIR: Sixteen.

BY MR. BATTLE:

Q --16, can you tell me briefly the circumstances when you wrote that.

A I had just received both of Judge Cassidy's Supplemental Order and Order a couple days before that. And I believe it was around Christmastime. And I just wrote a quick response to that because basically I detested the fact that he was saying I failed to appear in court in those orders when I did not fail to appear in court.

Q And -- all right. And that was done on the same day you received the news of the two orders that continued to hold you in contempt?

A Very close to it.

Q And it was done as, as a quickly -- was it done as a quickly written response or was it done over time and in drafts?

A It was done very quickly. The holidays were here. And I wanted to say something back and I wrote that reply.

Q All right.

Mr. Pilli, that may be all I have, If you would answer Mrs. Sengel's questions. Thank you, sir.

MS. SENGEL: I have no further questions.

THE CHAIR: All right. Mr. Williams.

MR. WILLIAMS: Mrs. Battle, do you have any more redirect or --

MR. BATTLE: No, sir. I believe that's all I have.

EXAMINATION BY MR. WILLIAMS:

Q Mr. Pilli, have you read recently your reply that's Virginia State Bar Exhibit 16? Have you read it recently?

A Yes, I have, Mr. Williams.

Q How recently have you read it?

A Yesterday, little bit today while I've been sitting here.

Q Read it yesterday and little bit today. Do you see anything in there that you would change today?

A Yea.

Q Can you tell me some of the things that you would change?

A Basically I would still emphasize to this panel and this committee that I did not knowingly or willingly fail to appear. I think that the way that was stated in the order was wrong and that part of my

reply would be truthful. It became, it became a situation where I sort of detested the language that was used in those reply orders that I failed to appear. Made me upset because it was basically insinuating that I was lying and that I wasn't proper, and I thought that was wrong.

Q Well, I'm just asking you if you were writing it today instead of writing it December 28th 2001, you were writing it today, what would you not put in there today that you did put in there in 2001?

A Most of the page two and page three and everything else that I wrote to the end.

Q Okay.

A I mean --

Q Why is that?

A Because I believe that was the emotions of

that day and that time after seeing two, two supplemental orders where i was called -- I was saying something wrong to the court, which I didn't. And I wrote it emotionally one day and tried to file it because I went out on Christmas vacation. And I would not do that -- I realize, I mean, Judge Cassidy and I have had many cases before this and many after. And would have changed my opinion as to what I said and the way I said it. But I did not fail to appear for

court. And I did not like the way that my client was talked to and the way he approached me.

I run a professional business. I try to have dignity with my practice. That's a very, very fine line when you build a business and you want to maintain that relationship with your clients. And I was defenseless because I didn't know what the judge said to him. I only heard what he said and how it was said. And I heard it from other attorneys as well, not just him.

Q If you look at what's been marked as Exhibit 17, the complaint that you wrote to the JIRC situation.

A Yes. That was written after.

Q It's dated December 15, 2001, so I assume

this was written first.

A Right.

Q It was written three days after the hearing in court on December 12th.

A Right. There was nothing else I was going to resolve at that point. So I was still frustrated, and still wrote a very frustrating reply to the Commission trying to get some help for this.

Q well, I mean, are there things in your complaint to the JIRC Commission that if you had them

to write today, that you wouldn't put in there?

A Yes, I would change it totally. I was once again very emotional when I wrote this, and I had never had a situation where I couldn't ask a judge about anything like that. And this was very frustrating. And I kept hearing my name with failure to appear, and I didn't appreciate it. And it was wrong, but I shouldn't have written this report. I would change this entirely.

Q So you were operating on emotion. And, of course, when we practice law in criminal law, lots of times the things that bring people to court are based upon some form of an emotional reaction? Would you

agree? A lot of criminal laws are related to the emotional reaction?

A And then physical action, yes.

Q Sure. Okay.

And I'm sitting here looking at Rule 8.2, and it says reckless disregard. Do you feel like when you sat down and you wrote this on December 15th and then you wrote again on December 28, that you were acting recklessly?

A I don't believe I was acting recklessly.

I was, I believe I was reacting emotionally, but I was replying to the frustration of not being able to

confront somebody making statements about me and my practice that affect my income in an open court. I was very, very adamant about that. I didn't appreciate it. And I couldn't say anything in the court and couldn't get any response. So my response was to write to the Commission and try to get some help with it.

Q Well, you understand courtroom decorum?

A I do. And I was very proper in every procedure in this courtroom. And Judge Cassidy did not argue, we did not. I did not throw words around.

I know that, but I wasn't --

Q Well, when you file pleadings you're using
words, aren't you?
A I did write pleadings, yes.
Q And when you put your reply in the Court
record, you basically have published that, haven't you? It's there for anybody that wants to come and look at it; isn't that true?
A Yes.
Q Okay. When you write your complaint to
the JIRC Commission and you send it into the four winds, you have published that, haven't you?
A I now know that. I believed at the time
that it was confidential pleading. I tried to write

it so somebody could address the judge about what was going on and hopefully talk to me and him so we could work it out. Now I know that that's different.

Q Well, would you say today that what you wrote December 15 and December 28th impugned the integrity of Judge Cassidy?

A I just know that I wrote what I felt factually happened.

Q I understand that. You said that. I'm asking you, and it's simple yes or no, I guess. I'm going to pin you down to a yes or no. Give me a yes or no. Do you feel like you impugned the integrity of

Judge Cassidy?

A I think it would be questioned by what I wrote, yes.

Q The service, the Sheriff's Department's efforts to serve you, I think we all understand the close proximity within which you operate, two courtrooms and your office is right there, and I understand the Sheriff's Department is in one of these buildings also. I understand that the show cause was issued on the 16th and that you filed a response on the 18th of October. And, in essence, I haven't looked closely but it may be that you filed your response even before the first attempt to serve you.

have not -- never done a court-appointed case in almost ten years.

Q And you admitted you have had other issues regarding continuances with members of the Fairfax bench?

A I don't recall one specifically. I mean, any time you're doing multiple cases on multiple days, situations arise, but they have all been resolved, at least to my satisfaction and to the Court's satisfaction, but it never rose to a situation like this. And I never had someone flat out tell me I failed to willingly appear for court. That's -- I don't think, and I never did it.

MS. SENGEL: I have no further questions

of this witness.

MR. BATTLE: Nothing else, Mrs. Gould.

EXAMINATION BY THE CHAIR:

Q Do you believe that Judge Cassidy failed to exercise proper courtroom decorum during the, for instance, the December 12 hearing?

A When he basically made those statements to my client and my client came back to me and told me what was said, I believe that was very improper courtroom demeanor when a judge make comments like

that from the bench. They affect that attorney, practice, his income, and his relationship with among his peers and around the people he works with. And I didn't appreciate it. And I heard it from many people that day.

Q Well, now as I understood from Judge Cassidy's testimony, this matter came up on December 11 at the very end of his docket?

A Maybe that day but --

Q So why would there have been anybody else in the courtroom to have heard these statements and as you say many, many lawyers reporting to you?

A At the end of his docket at that time does not mean that weren't other attorneys in there that heard. And I know other attorneys heard and I know my client heard it. And my client, first thing to me not was what are we going to do with my case, but you ought to hear what he's saying about you. That's the first thing I was confronted with on the December 11th when I got back. All I did was innocently pass my case in Courtroom 1A in the, in the Fairfax County Courthouse, walk a block over -- I probably drove over, did my City case, came back, and was still in Courtroom 1A with Mr. Bordieux. And then they took the file from behind the scenes, took it up and over,

moved it to Courtroom 2B. No one told me. And I didn't have to leave a note where I was going at that time because I had passed the case. And whoever took the pass that morning, knew that I wasn't there, or else Judge O'Flaherty would have issued a rule to show cause because he would have called the case. The case was passed. Mrs. Faye wasn't here to testify. I've passed cases every day for the last 15 years. I don't have any doubt I passed that case.

Q So your comments in Exhibit 16 with regard to the Judge Cassidy's behavior was based upon what your client told you and what these many other lawyers

told you happened?

A Well, I think the most important part is what I heard. I'm not so worried about other attorneys because they know me, but I certainly was concerned about the relationship between me and my client. That affected me greatly that day.

Q What about when you personally appeared in front of Judge Cassidy? Did you feel like he -- any of his courtroom decorum was inappropriate?

A Well, I think on -- when I asked for the continuance for the, from the December 11th date and he denied it, and then when I was in court and I said my secretary sick, I'm going to ask for a continuance

19th Judicial District
Fairfax County General District Court
246-2153

CRIMINAL/TRAFFIC CONTINUANCE REQUEST

Commonwealth of Virginia
County of Fairfax

VS. BRADLEY WINTER
(Defendant Name)

VSS EXHIBIT 4

Docket Nos: T 01-125908

☑ Fairfax County
☐ Herndon ☐ Vienna

Charges: LEAVING THE SCENE OF AUTO ACCIDENT

Officer/Complainant: # 2986 Wilson

Current Court Date: SEPT 18, 2001 ☑ Trial ☐ Preliminary Hearing Time: 9:30

Attorney Name: DENNIS A. ALY (Print Name) ☑ Retained ☐ Court Appointed ☐ Public Defender

Continuance Request By: ☐ Commonwealth ☑ Defense Attorney ☐ Defendant ☐ Police Officer

☑ In Person ☐ By Phone

Accident: ☐ Yes ☑ No
Witnesses: ☐ Yes ☑ No

To Be Notified By: ☐ Commonwealth ☐ Defense

Case has previously been continued 0 times by Commonwealth
Case has previously been continued 6 times by Defendant

Continued For:
☐ Subpoena witnesses
☐ Failure to Appear

Reason Requested: FIRST TIME CONTINUANCE REQUEST. DEF. WILL WAIVE PRETRIAL, VA TRIAL ON 10/16/01. ATTORNEY NEXT DATE IS JANUARY 17 2002. ANY NOV. OR OFF DATE WILL WORK, ALSO.

Date: 9/13/01

DENNIS ALY
Print Name of Person Making Request

Clerk: [signature]

[signature]
Signature of Person Making Request

Note: Felony continuances must be signed by both the Commonwealth's Attorney and Defense Counsel. Requests for continuance by the Commonwealth require a signature of counsel of record, if any.

I ASK FOR THIS:

[signature]
Attorney for (Commonwealth) (Defendant)

SEEN AND AGREED TO: (Excepted To)

[signature]
Attorney for (Commonwealth) (Defendant)

Continuance Request is: ☐ Approved ☐ Denied Reason:

By: _____ Judge

New Court Date: 10-16-01 1-17-02 186 ☐ 9:30 a.m. ☐ 2:00 p.m.

Criminal/Traffic Continuance Form (7/1/98) White-Original Court Copy Canary-Defendant/Clerk

K

Exhibit 9

Pilli tape

Hello Judge Cassidy, this is Mr. Pilli again. It is Monday, October 22 and it is 12:45. I am calling again regarding this matter of the Rule to Show Cause, Commonwealth v. Walter Bordeaux. As I tried to say this morning, we filed that request back in September and we had sent Mr. Bordeaux a letter that the case was presumed to be continued to January 17. What I cannot find out...I guess you're the original judge that denied it although I can't tell from the initials, but the situation being...perhaps someone on my staff got a message but we've had a new secretary since then and we can't find her to figure out if she got that verbal commitment or not, but unbeknownst to me, I presumed the case was continued until January 17 and it went in the file that way. Once again, professionally, I'm going to ask you to remove the Rule the to Show Cause. I don't believe it's warranted. I think you had adequate documentation there to grant the continuance...(inaudible)...just being a professional, rather

Exhibit 12

(190-191)

than have my name circulated throughout the courtroom on a Rule to Show Cause, I'd appreciate it once in a while, since I'm in the court with three to five cases every day, a phone call to ask what happened or at least the right to explain ourself (*sic*) if there was a mistake. It does happen on occasion that I can't verify every continuance. I'm asking you for your professional courtesy. I take pride in my representation, and for your information, Your Honor, I donate thousands upon thousands of dollars a year to Fairfax County and Prince William County charities. I've done it through my businesses and I've done it successfully, and I take pride in that. And I didn't mind the fine, I mind the principle. I think I've earn some respect from the Court. I thank God that I'm busy and I'm sorry that I'm too busy sometimes to handle everybody, but I don't make mistakes with continuances, and I apologize for my comments this morning but I just have to stand up for that principle, and I'm gonna ask you to consider it. I'm gonna ask you to ask one of your colleagues. I think they would see it the same

way. Sometimes members of the Bar...and I'm very, very sick trying to do this, and I had to get up this morning (coughs) when I can't even talk to come see you. And basically I am asking for some professional courtesy from the members of the Bar. I think it's needed, and a lot of us talk about it in the hallways, but in that situation, there was more than enough documentation to know I was in Petersburg on that day on a hearing, and I did not take it on my own to schedule a continuance. It's just a matter of usually (*sic*) formality. But from now on, from this point forward, since that maybe isn't the policy of the court anymore, I myself or my secretaries will call every day to verify after two that that continuance was definitely granted. Now on the judges end, they need to know that it's very difficult to get through to that court every day. It's impossible in the morning and I've called Ms. Lake about it and I've called again to set something up for an official attorneys' line to get something done so we can get our continuances and our information sooner. The day before

that case came up, I was also out getting ready for Petersburg....so I hope I've made myself clear. I'm trying to do that for you. I'm not going to blame somebody on my staff for not doing it, but I'm going to ask for your professional courtesy. 703/691-3252. Thank you.

Dominick A. Pilli, Esq.

Attorney at Law

10560 Main Street, Suite 308 • Fairfax, Virginia 22030
Telephone (703) 691-3252 • Fax (703) 273-1733

October 30,2001

ATTN: Ms. Nancy Lake
Clerk of the General District Court
c/o Judge Michael J. Cassidy
Fairfax County General District Court
4110 Chain Bridge Road
Fairfax, Virginia 22030
Phone:(703)246-2153

RE: Commonwealth of Virginia vs. Walter Stuart Bordeaux
Case No.: T01-125987/T01-156966

Dear Ms. Lakes:

Pursuant to our conversation on Friday morning, the 26th of October 2001, this letter is a request to you to request Judge Cassidy to further continue Mr. Walter Bordeaux's case to the originally scheduled continuance date, of January 17, 2002 at 9:30 AM.

As we had discussed on Friday October 26, 2001,I had contacted the Court regarding my first time continuance request and you had pointed out to me that there was

Exhibit 13

(193-194)

a slight clerical error. As we both now know, the error was evident, whereby when Judge Cassidy received the request for continuance, he did not receive the underlying paperwork that showed that I had to be in the City of Petersburg on October 16, 2001, and could not possibly be in Fairfax County on the same date, therefore the matter should have been continued, and, most important of all, A Rule To Show Cause should not have been issued.

Pursuant to my conversation with you, we discussed perhaps scheduling a time to discuss this matter with Judge Cassidy in Judges Chambers rather than continuing this Motion To Remove the Rule To Show Cause or my answering a Rule To Show Cause on December 11, 2001.1 had already previously sent my client a letter continuing this case to Jan 17, 2002. I can see that there might have been a misunderstanding, but in relaying information to my secretary, she had confirmed that she indeed spoke with a Clerk regarding the continuance in which Mr. Bordeaux's case was to be continued to January 17, 2002 before the General District Court. My secretary will swear under oath that she confirmed with a Clerk over the phone for the continuance request which was believed tobe automatically approved. This was also a first time continuance request on behalf of my client, Mr. Bordeaux. At the time I filed for the continuance, neither Police Liason, nor the Clerk's office had any available October, or November dates for the Officer Wilson.

In light of the fact that this could have been a error on behalf of the Clerk of the Court as stated by you, and the fact that the Judge did not have all of the paperwork at the time of the continuance request, I respectfully request to set up an available date to convene and discuss this matter prior to the scheduled December 11, 2001 court dale. The current date of December 11, 2001 also conflicts with a trial date I have set in another jurisdiction. I believe the

Rule to Show Cause should not have been issued, therefore it should be removed.

Ms. Lake, please review this matter closely and I will ask that you schedule an arrangement with Judge Cassidy to set up a time that is also convenient on his calendar. Please feel free to contact me at my office at (703) 691-3252, to schedule this meeting. I appreciate the professional courtesy extended by all and to all in this matter. Thank you.

Respectfully submitted,

\s\ Dominick A. Pilli
Dominick A. Pilli, Esq.
DAP/mqc

cc: Honorably Judge Cassidy,
General District Court of Fairfax Court

SHOW CAUSE SUMMONS (CRIMINAL)

FAIRFAX CO. GENERAL DISTR. ☒ General District Court

☐ Juvenile and Domestic Relations District Court

4110 CHAIN BRIDGE ROAD, FAIRFAX, VA 22030

TO ANY AUTHORIZED OFFICER:

You are hereby commanded to summon forthwith the Respondent to appear before this Court on

12/11/01 09:00AM to show cause, if any, why Respondent should not, pursuant to

Va. Code § 19.2-135

☐ serve the sentence previously suspended on ..... because .....

.....

.....

☒ be imprisoned, fined or otherwise punished for:

☒ failure to appear in this Court on 10/16/01 09:00AM

☐ failure to pay fines and/or restitution or an installment thereof;

payment due: $ ..... on .....

☐ failure to provide support as ordered: $ .....

with $ ..... arrearage as of .....

☐ failure to obey an order of ☐ this court ☐ .....

ordering .....

☐ have his driving privileges revoked for failure to timely pay the VASAP fee

☐ have his VASAP participation revoked because .....

☒ (Other-Explain) FAIL TO APPEAR AS ATTY ON CASE #T01-185987

.....

WARNING: Failure to appear may result in your being fined or jailed.

10/7/01

FAIRFAX COUNTY GENERAL DISTRICT COURT
I, the undersigned clerk or deputy clerk of said Court, hereby certify that pursuant to Va. Code § 8.01-387 on this date I delivered a true copy of this summons to the above named person.
CLERK/DEPUTY CLERK

CASE NO. GT01136966-00

SUMMON THIS RESPONDENT:

PILLI, DOMINGIN A

10560 MAIN ST STE 300

FAIRFAX, VA 22030

M	F	99	99	99					

SHOW CAUSE SUMMONS (CRIMINAL)

In connection with the case of

☒ Commonwealth of Virginia

In re/V.

HECTER E BORDEAUX

VSB EXHIBIT 3

COMPANION CASE FILE NO. GT01125907-00

EXECUTED by delivering a true copy of this summons to the Respondent in person this day:

VIRGINIA: IN THE GENERAL DISTRICT COURT

The within mentioned papers could not be served in Fairfax County, Virginia, on the ... day of ... 20... as to ... because ...

HEARING AND TR

12/11/01

Exhibit 10

(188)

82

[Monday 10/22/01] [Judge Michael Cassidy]

MOTION TO REHEAR

Commonwealth of Virginia VA. CODE §§ 16.1-133.1; 16.1-97.1; 20-94; 8.01-331

Fairfax
CITY OR COUNTY

☒ General District Court
☐ Juvenile & Domestic Relations District Court

STREET ADDRESS OF COURT

I, the undersigned, respectfully request that this Court reopen the case named at right for the following reasons:

motion to [redacted] remove
show cause
MR. PILLI HAD NO MEMORY THAT THIS MATTER WAS NOT CONTINUED IT
WAS A FIRST TIME CONTINUANCE REQUEST. AT THE TIME OF FILING THE
REQUEST, THE PULSE LIAISON OFFICE HAD NO NOVEMBER, OR DECEMBER HEARING
DATES FOR OFFICER L.D. WILSON. MR. PILLI RESPECTFULLY REQUESTS THAT THIS
CASE BE DISMISSED.
10/1 Rule Granted

APPLICANT'S TITLE

[redacted]
APPLICANT'S SIGNATURE

NOTICE OF HEARING VA. CODE § 16.1-97.1

TO: RESPONDENT

Take notice that a hearing will be held in this Court on

10-22-01 9:30 a.m. on this motion.
DATE AND TIME

10/18/01 [redacted]
DATE CLERK

HEARING DATE: To 1-15-01 CASE NO.: [redacted]

MOTION TO REHEAR AND NOTICE OF HEARING

☐ Commonwealth of Virginia
☐ .....

In re/V.

Pilli, Damnick

189

DATE OF ORIGINAL JUDGMENT OR FINAL HEARING
10-16-01
12-11-01

Service on Respondent type required:
☐ Personal Service Only
☐ Personal or Substituted Service Only
☐ Mailed on .....
DATE

VSS EXHIBIT 7

Exhibit 11

(189)

83

JUDICIAL DISTRICT OF VIRGINIA
FAIRFAX COUNTY GENERAL DISTRICT COURT

Fairfax County Judicial Center
41 10 Chain Bridge Road
Fairfax, Virginia 22030-4009
703-246-2153

November 6, 2001

Dominick A. Pilli, Esq.
10560 Main Street, Suite 308
Fairfax, Virginia 22030

Re: Commonwealth of Virginia vs. Walter Stuart Bordeaux, Case No. T01-12598

Dear Mr. Pilli:

I have received your letter of October 30,2001 concerning the above referenced case. The case was never scheduled for January 17, 2002. It is agreed that a continuance request was submitted, however, the request was not forwarded to a judge. Instead, it was continued by a clerk to the officer's next date which was October 16, 2001. The defendant was notified of the new date and did not appear, apparently because he received other information from you.

Your letter indicates that a secretary spoke with a clerk over the phone and it was confirmed that a continuance was approved. The continuance was approved, however, your office failed to confirm the date. It was not approved for the January date you requested, it was instead approved, by a clerk, for October 16. I am sure you are aware that it is always the responsibility of the attorney to call back and confirm the new date. Case information is

Exhibit
14

also now available on the Internet at the Supreme Court's website: www.courts.state.va.us

You seem to indicate in your letter that Judge Cassidy received your continuance request. He did not. The continuance request was processed on September 18, by a clerk, and continued to October 16. The case was on Judge Cassidy's docket on October 16 for trial. At that time, he issued a failure to appear for the defendant, who had been notified of the date, because he did not. appear.

The case is now set for December 11, 2001. If that date is not convenient for you, a new continuance request will need to be filed with the Traffic Division.

It would be inappropriate for me to attempt to schedule a meeting between you and Judge Cassidy prior to the show cause hearing. All such hearings, and all pertinent information, should be addressed in an open court hearing.

Sincerely,

\s\ Nancy L. Lake

Nancy. L. Lake
District Court Clerk

ATTN: JUDGE CRAWFORD

19th Judicial District
Fairfax County General District Court
CRIMINAL/TRAFFIC CONTINUANCE REQUEST

VSB EXHIBIT 12

Commonwealth of Virginia
County of Fairfax

Docket Nos: _____

vs.

☑ Fairfax County

VICTOR BORGEAUX
(Defendant Name)

☐ Herndon ☐ Vienna

Charges:
FAILURE TO SHOW CAUSE/MOTION TO REVOKE

Officer/Complainant: WILSON F2956

Current Court Date: DEC 11, 2001 ☑ Trial ☐ Preliminary Hearing Time: 9:30 AM

Attorney Name: DOMINICK A. PILLI ☑ Retained ☐ Court Appointed ☐ Public Defender
(Print Name)

Continuance Request By: ☐ Commonwealth ☑ Defense Attorney ☐ Defendant ☐ Police Officer

☑ In Person ☐ By Phone

Accident: ☐ Yes ☑ No

Witnesses: ☐ Yes ☑ No To Be Notified By: ☐ Commonwealth ☐ Defense

Case has previously been continued 0 times by Commonwealth
Case has previously been continued 1 times by Defendant

Continued For:
☐ Subpoena witnesses
☐ Failure to Appear

Reason Requested:
DEFT. PILLI'S PERSONAL REQUEST, DUE TO A TRIAL CONFLICT ON 12/18/01 AND NO OTHER AVAILABLE DEFENSE DATES, THIS CASE WAS AGREED TO BE CONTINUED TO 01/17/01. DEF. HAS NOT BEEN CHARGED WITH ANY NEW OFFENSE.

Date: 11/16/01 PLEASE CONTINUE THIS TO JAN 7, 2001 AT 9:30 AM

DOMINICK A. PILLI
Print Name of Person Making Request

Clerk: _____

Signature of Person Making Request

Note: Felony continuances must be signed by both the Commonwealth's Attorney and Defense Counsel. Requests for continuance by the Commonwealth require a signature of counsel of record, if any.

I ASK FOR THIS:

Attorney for (Commonwealth) (Defendant)

SEEN AND AGREED TO: (Excepted To)

N/A
Attorney for (Commonwealth) (Defendant)

Continuance Request Is: ☐ Approved ☐ Denied Reason: _____

It is so ordered.

_____
Judge

New Court Date: _____ ☐ 9:30 a.m. ☐ 2:00 p.m.

Criminal/Traffic Continuance Form (11/98) White-Original 197 Canary-Defendant/Clerk Pink-Police Liaison

Exhibit 15

(197)

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE 19TH JUDICIAL DISTRICT

CaseNo.:T01-156966
In the Matter of
DOMINICK A. PILLI
ORDER FINDING COUNSEL FOR
DEFENDANT IN CONTEMPT OF COURT

THIS CAUSE CAME TO BE HEARD this 11th day of December 2001, upon a Rule to Show Cause why DOMINICK A. PILLI (hereafter PILLI) should not be held in contempt of this Court for failing to appear with his client, Walter E. Bordeaux, on October 16, 2001, for the trial of a traffic charge.

Walter E. Bordeaux was summoned to appear in the Fairfax General District Court Traffic Division on September 18, 2001 for the charge of Hit & Run (Attended Property) - Attachment A. On September 17, 2001, PILLI entered his appearance as counsel for Bordeaux and requested a continuance on a standard court form (Attachment B). Two available dates for the police officer were listed on the form - October 16 and January 17. PILLI requested the later date because of a trial in Petersburg. On the upper right hand corner of the form the clerk included the phone number for chambers to verify the continuance and the next date of the case.

As noted in the upper right-hand corner of Attachment A, the case was continued to October 16. On that date neither PILLI or his client appeared in court. No motions or requests had been filed to change the October court date. A Show Cause for Contempt was issued against PILLI. The Show Cause and traffic charge were set for December 11,

Exhibit 16

(198-199)

2001.

Beginning October 18, 2001 the deputy sheriff attempted on nine occasions to serve the Show Cause either in person and by contacting PILLI by phone. On November 26, 2001, the deputy returned the Show Cause noting that PILLI would not make himself available for service.

On October 18, 2001, PILLI filed a motion to "Remove Show Cause" (Attachment C). That motion was heard on October 22, 2001 and denied. Prior to the December 11 hearing PILLI filed a motion to continue the Show Cause hearing (Attachment D). Because PILLI cited no reason to continue the matter, that request was denied.

On December 11, 2001, PILLI failed to appear before this Court in response to this Show Cause at the scheduled time of 9:30 a.m. This Court's bailiff was sent out to see whether PILLI was in the building. She was unable to find him but did bring his client to the hearing room. Mr. Bordeaux indicated that he believed he was in one of the other traffic courtrooms. The bailiff had checked those rooms. The last time the client had seen PILLI was before 9:30a.m. PILLI had not left a note with the case or with any court personnel about his location.

PRELIMINARILY, IT APPEARS TO THE COURT, that while actual service of the Show Cause was not obtained on PILLI, he had actual knowledge of the hearing based on his two motions. THEREFORE this matter is properly before the Court.

IT FURTHER APPEARING TO THE COURT that PILLI has exhibited a disregard for the scheduling practices of this Court by failing to verify the continuance of and scheduled date of matters where he is counsel of record before this Court. That disregard affects the perception of

this Court by not only PILLI's clients but also the victims in this case. Additionally, as an officer of this Court PILLI's failure to make himself available for service of this Show Cause demonstrates a lack of respect for legal process. The Court further finds PILLI's failure to appear at the Show Cause hearing contemptuous. By such conduct the attorney DOMINICK A. PILLI is found guilty of misbehavior as an officer of this Court and as such in contempt of the Court and he is, therefore,ORDERED to pay a fine of TWO HUNDRED FIFTY DOLLARS ($250.00) on or before January 11, 2002. If such payment is not received by that day a Capias for the arrest of DOMINICK A. PILLI shall be issued. It is also ORDERED that the clerk to shall mail a certified copy of this order:

Dominick A. Pilli
10506 Main Street, Suite 308
Fairfax, Virginia 22030

and to:

Virginia State Bar Disciplinary Board
707 East Main Street
Suite 1500
Richmond, Virginia 23219

ENTERED this 11th day of December 2001.

\s\ Michael J. Cassidy
Michael J. Cassidy, Judge

DEFENDANT	ROOM	TIME	NUMBER	CHARGE
PALACIOS, HAROLD	1B	0930	GT01173769-00	DRIV UNDER REVO/S
PARKER, ROGER L	1C	0930	GT01173781-00	DRIV UNDER REVO/S
PARRISH, MERCEDES	1B	0200	GT01170654-00	RECKLESS DRIVING
PARRISH, MERCEDES	1B	0200	GT01170655-00	DRIV UNDER REVO/S
PAULSON, MARK G	1D	0930	GT01165027-00	OPER UNINSPECTED
PENA, MAURICIO J	1D	0930	GT01155174-00	DRIV UNDER REVO/S
PENA, MAURICIO J	1D	0930	GT01155175-00	FAIL STOP/YIELD EX
PERALTA, ALBERTO MAIN	1D	0930	GT01169507-00	DRIVING WHILE INTO
PERKINS, TIMOTHY WILLIAM	1A	0930	GT01146314-00	FAIL STOP/YIELD EN
PHAM, TRI VAN	1D	0930	GT01170338-00	OPER UNINSPECTED V
PHILLIPS, GILLIAN	1B	0930	GT01170410-00	VEH IMPROPERLY STO.
PHILLIPS, ROBIN ANN	1D	0930	GT01172935-00	074/55 SPEEDING
PICKEL, TERESA ANN	1B	0930	GT01170344-00	DRIV UNDER REVO/SU.
PIERCE, JASON F	1C	0930	GT01169575-00	DRIVING WHILE INTO
PILLI, DOMINICK A	1A	0930	GT01156966-00	SHOW CAUSE
PIZARRO, ORTIZ FERNANDO	1A	0930	GT01165120-00	056/35 SPEEDING
POHORYLO, ELEANOR F	1A	0930	GT99223220-02	BENCH WARRANT
PORTER, WILLIAM THOMAS	1A	0930	GT01120060-00	HOV VIOLATION
POWELL, JENNIFER	1C	0930	GT01166508-00	FAIL MAINTAIN PROPE
PRATTS, CESAR	1A	0930	GT01132996-00	FAIL STOP/YIELD DU
PRATTS, CESAR	1A	0930	GT01133002-00	CHILD RESTRAINT VIO
PRATTS, CESAR	1A	0930	GT01133004-00	SAFETY BELT VIOLATI
PRIBADI, GUNNAR	1A	0930	GT01157521-00	FAIL TO STOP FOR SC
PRYOR, MARY E	1A	0930	GT01144647-00	REG/LIC/TITLE OFFE?
PRYOR, MARY E	1A	0930	GT01144650-00	OPER UNINSPECTED VE
PRYOR, MARY E	1A	0930	GT01144654-00	DRIV UNDER REVO/SU
PUYPE, ERIC CHRISTIAN	1D	0930	GT01174257-00	HOV VIOLATION

Exhibit 17

(202)

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE 19TH JUDICIAL DISTRICT

CaseNo.:T01-156966
In the Matter of
DOMINICK A. PILLI
SUPPLEMENTAL ORDER FINDING
COUNSEL FOR DEFENDANT
IN CONTEMPT OF COURT

THIS MATTER WAS ORIGINALLY HEARD December 11, 2001, when the Defendant DOMINICK A. PILLI (hereafter PILLI or Defendant) failed to appear and he was tried in his absence. As indicated on the attached Motion to Rehear, the Defendant had scheduled two additional matters in the District Court of Fairfax City and an additional matter in the Fairfax County Court along with this Show Cause and the underlying Hit and Run charge for 9:30 a.m. of the 11th. Because of those other matters PILLI was not with his client when the matter was called for hearing. Therefore this matter was reopened for hearing on Decemebr 12, 2001. The Defendant was given an opportunity to present evidence and show cause why he should not be held in contempt.

The Defendant indicated that his secretary of two years would testify that she had checked back with the Court at the phone number provided and confirmed the continuance date. This witness however was unavailable either on the original hearing date of the 11th or the current hearing of December 12th. A witness subpoena had not been requested. The Court has difficulty resolving this proffer of testimony with earlier statements of the Defendant in October that his office had presumed the case had been continued and that he was unable to determine if

(203-204)

Exhibit 18

an unavailable, new secretary had gotten a call back on the continuance.

UPON CONSIDERATION OF THE APPEARANCE OF THE DEFENDANT, the Court reaffirms its earlier findings in this matter, with the exception to the reference to his non-appearance on December 11, 2001, and suspends ONE-HUNDRED-FIFTY DOLLARS ($150.00) of the previously imposed TWO HUNDRED FIFTY DOLLAR ($250.00) fine. Said payment is due within 30 days of the date of this order.

ADDITIONALLY, the Court notes but takes no action on the post sentencing comment of the Defendant that he intends to appeal the case including to the "Judicial Inquiry Commission."

It is also ORDERED that the clerk to shall mail a certified copy of this order:

Dominick A. Pilli
10506 Main Street, Suite 308
Fairfax, Virginia 22030

and to:

Virginia State Bar Disciplinary Board
707 East Main Street
Suite 1500
Richmond, Virginia 23219

ENTERED this 12th day of December 2001.

\s\ Michael J. Cassidy
Michael J. Cassidy, Judge

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE 19TH JUDICIAL DISTRICT

CaseNo.:T01-156966
In the Matter of
DOMINICK A. PILLI

REPLY TO SUPPLEMENTAL ORDER
OF JUDGE CASSIDY
(DECEMBER 12,2001)

Comes Now, Dominick A. Pilli, Esquire, Pro Se and files this Reply to Judge Michael Cassidy's Supplemental Order dated the 12th day of December, 2001. This Reply hereby is filed to clarify the errors which Judge Cassidy has so negligently and carelessly, (a second time) failed to give consideration to, in these matters:

First of all, Mr. Pilli and the Law Offices of Dominick A. Pilli, P.C. take offense with the inappropriate and inaccurate statements by which Judge Cassidy begins his Order. (Mr. Pilli had an excused reason to be completing a trial in Petersburg, Virginia, and he did not fail to appear, knowingly, in Judge Cassidy's Courtroom). All we ask is that as an Officer of the Court, a Judge no

(205-210)

Exhibit 19

less, is that he, if he is going to reiterate the facts, that he tell all of the facts and more importantly, to tell the truth. For instance, Mr. Pilli was in Courtroom 1A at 9:15 AM on the morning of December 11, 2001. He had passed the matter of Commonwealth of Virginia v. Walter Bordeaux, and the accompanying Rule (said case to be heard as soon as Mr. Pilli finished another case).

Mr. Pilli had to go to another Courtroom to complete his case. The Judge's Order **FAILS** in the very first sentences to tell the truth. His skewing of the facts is and was not proper for a Judge. Further, he never states in this supplemental Order that two Judge's took it on their own to remove a case from Courtroom 1A to 2B, and not tell the Attorney. Judge Cassidy, not being impartial as he has failed to be in the entire matter, never called my office to determine what Courtroom I was in, nor to inform me or my staff of the Courtroom change. He simply, by exercising a minute degree of patience, could have done that. The changes were unbeknownst to me. Thus, the

Judge held me in Contempt of Court. This was on a case where he knows on the morning of trial that I am in the Courthouse, and am aware of my caseload.

The only reason this matter was scheduled to December 11, 2001, is because I called the Judge, and went to the Clerk and filed a Motion To Rehear.

On the morning of the 11th of December, I was not with my client, because I left him in the Courtroom 1A while I attended to a simple traffic matter in the Fairfax City Court. When I returned, my Client informed me that the case had been transferred, that Judge Cassidy was berating me in the open Courtroom, in Courtroom 2B upstairs, and that he "my client" was "in shock" as to offensive comments which Judge Cassidy had made in from of him, (about his Attorney). Because I had passed the case, and returned in time to complete the case (a practice which Judge Cassidy is well aware of) there should not have been any offensive comments and trouble to be instigated by Judge Cassidy in this case.

(205-210)

The Judge is totally wrong when he utilized language such as "failed to appear." I cannot tolerate a Judge lying to this Court, to this Attorney, to the Judicial Review Commission and to the Virginia State Bar. He is flat out inaccurate, and wrong.

In paragraph 2 of Judge Cassidy's Supplemental Order, his lack of patience and tolerance for my secretary's sickness is inexcusable. He just kept trying to railroad this matter through to the finish. However, his comments were inappropriate, rude, and demeaning, I will make myself clear this is not over with yet. My secretary was sick on both the 11th and the 12th of December and unavailable for the hearing. I promise you she will be available on the date of the Appeal and the Jury will hear the truth. No Witness Subpoena was necessary, as the witness was coming to tell the truth. She was not a hostile Witness. She had agreed to come. Once again, this is another day Judge Cassidy was going overboard in this failure to acknowledge the reason for the Continuance and his failure to address any

degree of professionalism, proper discretion, professional court demeanor, impartiality, and tolerance for Counsel.

Finally, last but not least, his total failure to exercise any degree for the respect of a man, and his law office staff, and any one client, after that man has spent twelve years developing a successful law practice, handling 15-20 cases a week, day in and day out, week in, week out, generally without incident except for the occasional impatient Judge,

is just not fair. There is no excuse for what he has perpetuated. However, I intend to see it corrected. His lack of understanding of the solo practitioners law practice and the reputation that one fights to protect, and his failure to respect the ability of one to earn his his paycheck, is totally deplorable. No one pays for my benefits. Judge Cassidy better never forget that fact. My vote supported his appointment. If he continues to forget where he came from, my influence will go far to have him removed. As a liason for the Bar, the Attorneys have spoken to me about his

courtroom comments, however, until it happens to you, you don't really understand. I do understand that there was a time in history that no one spoke out, and then when they tried to, it was to late. That will not be the case here.

Further, Judge Cassidy's recollection of comments made in Court of October 22, 2001, the date of Mr. Pilli's First Motion To Rehear, are also totally inaccurate. He was told that although the Court may have had some misunderstanding and his Court Clerks (as stated to Mr. Pilli by Clerk of the Court, Nancy Lake) may have made an error, there was no doubt that our office had verified that the Court date of the matter of Commonwealth of Virginia v. Walter Bordeaux had been continued to January 17, 2002. Mr. Pilli and his staff had to verify the continuance because he absolutely had to be in Petersburg, Virginia on October 16, 2001. There was no doubt about that feet, this is all a matter of common sense, and Mr. Pilli deplores that fact that the Judge Cassidy's ego is getting in the way of Judge Cassidy's professional responsibility and demeanor. I

believe his Courtroom demeanor needs to be investigated, and addressed and I intend to see to it that this type of behavior does not happen again, not by him, and not by anyone on the Fairfax Bench. This type of behavior is unbecoming of a Professional member of the Bench. No Attorney should have to go through this type of ridicule over a legitimate misdemeanor Traffic Court Continuance Request.

Mr. Pilli did note to Judge Cassidy that this matter will be appealed to a Jury Trial and Mr. Pilli professionally stated that he would file a Complaint to the Judicial Review Commission due to Judge Cassidy's failure to exercise professionalism, proper courtroom demeanor, as well as his failure to be dignified, and his failure to exercise impartiality.

This Reply was filed with the Clerk of the Court and a copy was mailed to:

Judge Michael Cassidy
Judges Chambers
Fairfax County General District Court
4110 Chain Bridge Road, 2nd Floor
Fairfax, Virginia 22030

and to:

The Virginia State Bar
Disciplinary Board
Attention: Judicial Grievance Board
707 East Main Street,
Suite 1500
Richmond, Virginia
23219-2803

and to:

The Judicial Inquiry and Review Commission
P.O. BOX 367
Richmond, Virginia
23218-0367

Respectfully Submitted,

\s\ Dominick A. Pilli
Dominick A. Pilli, Esquire

Law Offices of Dominick A. Pilli, P.C.
10560 Main Street, Suite 308
Fairfax, Virginia 22030
VSB# 30258
Phone:(703)691-3252

CERTIFICATE OF SERVICE

I hereby certify that this Reply was filed with the Clerk of the Court on this 28th day of December, 2001 and copy was mailed to: Judge Michael Cassidy, Judges Chambers, Fairfax County General District Court, 4110 Chain Bridge Road, 2nd Floor, Fairfax, Virginia 22030; and to: The Virginia State Bar Association, Attention: Judicial Grievance Board, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2803; and to: The Virginia Judicial Inquiry & Review Commission, P.O. BOX 367, Richmond, Virginia 23218-03 67.

\s\ Dominick A. Pilli
Dominick A. Pilli, Esquire

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA
CRIMINAL NUBER M21766

VERSUS
DOMINICK PILLI
APPEAL – CONTEMPT OF COURT

FINAL ORDER

On February 14, 2002, Megan Lustig, the Assistant Commonwealth's Attorney, the Defendant, DOMINICK PILLI, and Margaret DeWilde, Counsel for the Defendant, appeared before this Court.

The Court denied Counsel for the Defendant's Motion to Dismiss the Rule to Show Cause because the certificate of conviction and circumstances of the offense and the recognizance were not timely filed in the circuit court, which motion was denied.

The Defendant was arraigned upon the contempt order and the "Defendant entered a plea of not guilty. The Court proceeded to hear and to determine the case without the intervention of a jury, trial by jury having been

Exhibit
20

previously waived, to which the Attorney for the Commonwealth consented and the Court concurred.

The Court then proceeded to hear all of the evidence presented on behalf of the Commonwealth.

The Court heard all of the Defendant's evidence and argument of Counsel.

In consideration of the evidence heard and the argument of Counsel, the Court found the Defendant, DOMINICK PILLI guilty of CONTEMPT OF COURT, as charged in the Fairfax County General District Court Order entered on December 11, 2001.

The Court **ORDERED** that the Defendant serve four (4) days in the Fairfax County Adult Detention Center and pay the costs of this case.

The Defendant was remanded to the custody of the Sheriff.

Entered on February 19, 2002.

\s\ Arthur B. Vieregg
JUDGE ARTHUR B. VIEREGG

Dominick A. Pilli, Esq.
Attorney at Law

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Telephone (703) 691-3252 • Fax (703) 273-1733

April 9, 2002

Noel D. Sengel, Esq.
Senior Assistant Bar Counsel
Virginia State Bar
100 N. Pitt Street
Suite 310
Alexandria, VA 22314-3133

Re: In the Matter of Dominick Anthony Pilli, Esq.
VSB Docket #02-051-2053
Complaint Received on 01/02/02
Complainant: VSB/Anon.

Dear Ms. Sengel:

Thank you for your letter of January 29, 2002. I apologize for the lateness of this response. Please be advised that I had forwarded the matter to my professional liability insurer and due to administrative oversight, counsel was not assigned to me until recently. Counsel, at that time, obtained an extension to respond to the Complaint.

I regret that the Virginia State Bar had to become involved in this situation. It is my view that this matter stems from a miscommunication between my office and the Clerk's office regarding a scheduling matter. This matter is of great concern to me, and I hope the following is of

Exhibit
21

assistance to you in determining the appropriate disposition of this matter.

I. FACTUAL BACKGROUND

I was retained to represent Walter Bordeaux in a traffic charge in the District Court for Fairfax County. Mr. Bordeaux's case was originally set for trial on September 18, 2001. I entered my appearance for Mr. Bordeaux on September 17, 2001. I also filed a written Continuance Request on September 17, 2001 regarding the September 18th trial date. The Request stated that this was a first time request by the defendant. It also stated that I had a trial in the Circuit Court for Petersburg, Virginia on October 16, 2001. The Request further stated that January 17, 2001 was the next open date for the Officer assigned to the case. The next trial dates for the court and the Officer were obtained from the Clerk's office and from the Police

Liaison's office. I personally contacted both of these offices in order to provide the information in the Request.

The September 18, 2001 trial date was continued by Judge Cassidy. Unfortunately, my office, specifically my secretary, Mollie Coleman, was informed by the Clerk's office that the new trial date was January 17, 2002. I

informed my client by letter that the new trial date was January 17, 2002. Furthermore, this date was placed on my calendar as the new trial date. Apparently, however, the trial date was not continued to January 17, 2002. Contrary to the information obtained from the Clerk's office, the Court continued the September 18, 2001 trial date to October 16, 2001. An Affidavit signed by Ms. Coleman is attached hereto.

Unaware that the trial was scheduled to go forward on October 16, 2001, I was in the Circuit Court for Petersburg, Virginia, as I had previously advised the Court in my Continuance Request. Likewise, my client was not in Court on this date. Judge Cassidy issued a Show Cause Order for my failure to appear before the Court on October 16, 2001. I was never served with a copy of the Order, but was told about the Order from a staff member at the Court. I filed a Motion to Remove the Show Cause on October 18, 2001. Judge Cassidy denied the Motion and informed me that the Show Cause hearing would take place as scheduled on December 11, 2001. On November 16, 2001, I filed a Continuance Request for the Show Cause hearing set for December 11th. This Request was denied by. Judge Cassidy.

On October 26, 2001, I had a conversation with Nancy Lake, Clerk of the General District Court for the Fairfax County General District Court, in an attempt to determine what had occurred in my absence. Ms. Lake informed me that there was a "slight clerical error" regarding the continuance. She stated that Judge Cassidy was informed that there was a Continuance Request as to the September 18th trial date, but that he was not provided with the underlying paperwork stating that I was not available on October 16, 2001. Ms. Lake agrees in her November 6, 2001 response letter that Judge Cassidy was not provided with the Request. She also states that it was

not Judge Cassidy, but a clerk, that continued the case to October 16, 2001.

On December 11, 2001,1 had two matters scheduled in General District Court for Fairfax County, and two in Fairfax City. The Courthouses are within a few blocks and it is typical for attorneys to move back and forth between the two courthouses for hearings. My client and I were both present in the Fairfax County General District Court that morning. The Show Cause and the Hit and Run matters were both scheduled to be heard in courtroom 1A at 9:3 O. When Mr. Bordeaux's case was called, it was passed at my request. The courtroom was full. I proceeded to the General District Court for Fairfax City. I handled my matters before that Court and returned to the Fairfax County Court, courtroom 1A. Upon return, I was notified that the Show Cause hearing had been moved to courtroom 2A. When I arrived at courtroom 2A, the courtrooom was closed. However, a staff member of the Court informed me that Judge Cassidy had found me in contempt in my absence. I was fined $250.00. On the same day, due to the failure of the Commonwealth's Attorney Office to have a non-subpoenaed witness present for

trial, my client's case was continued to January 17, 2002. On January 17, 2002,1 represented my client with respect to the Hit and Run matter and he was found not guilty.

I filed a Motion to Rehear the Show Cause matter of December 11, 2001. The hearing was set for December 12, 2001 before Judge Cassidy. I informed the Judge during that hearing that my secretary could verify her phone call to the Court regarding the original continuance date to January 17, 2002, but that she was ill and unable to testify on this date. Judge Cassidy affirmed his December 11, 2001 Order, but reduced the fine to $150.00. I appealed this decision to the Circuit Court. The Circuit Court affirmed Judge Cassidy's decision. I spent two days in the Fairfax Adult Detention Center.

Subsequently, I filed a Complaint with the Judicial Review and Inquiry Commission.

II. ANSWER

Although there are no specific numbered complaints filed by Judge Cassidy, I will do my best to respond to each perceived complaint.

Mr. Pilli failed to appear on October 16,2001

Answer: Admitted with the explanation provided below.

Although I failed to appear, this failure was a result of miscommunication between my office and the Clerk's office. My office was under the impression that the matter had been continued to January 17, 2002, and my secretary was in fact told by the Clerk's office that the matter had been continued to that date. I had absolutely no idea that the case was scheduled for October 16, 2001. Had I known that this matter was scheduled for trial on that date, I would have made other arrangements so that the matter was either continued or covered by another attorney. Furthermore, the Continuance Request was part of the file, and therefore, at the very least, there was an explanation of my whereabouts on October 16th.

I would never knowingly disregard a court date set for a client. This was not a willful disregard of the Court's scheduling practices.

Mr. Pilli would not make himself available for service of the Show Cause

Answer: Denied.

This allegation is not accurate. The Sheriff came to my office one morning when I was in court. I instructed my secretary to call the Sheriffs office and tell them to come in the afternoon to serve the Show Cause, as I am always in court in the mornings. After encountering some difficulty contacting the Sheriffs office, we were able to reach that office and inform them that

afternoons would be the best time to serve the Show Cause Order. Despite these efforts to inform the Sheriffs office of my availability, the attempts to serve me occurred only in the mornings when I was in Court. As a result, I was never served with the Show Cause Order.

I made affirmative attempts to inform the Sheriffs office of my availability. I never evaded service. In fact, I went to the motion's hearing without having been properly served.

Mr. Pilli did not appear for the Show Cause hearing

Answer: Denied.

I was prepared to defend myself at the Show Cause hearing on December 11, 2001. I was in Court on that date. I passed the Hit and Run and Show Cause matters, and proceeded to handle other matters. Part of my decision to pass the matters was the high volume of cases that day in courtroom 1A. Had there only been a few matters, passing the matter would have been inappropriate. The matter was passed with permission of the Court. I did not leave the courtroom without making sure that the matters had been properly passed. When I returned, courtroom 1A was still hearing matters. I was informed that, the Show Cause matter had been transferred to another courtroom. When I arrived in courtroom 2A, the courtroom was closed, but the Clerk's office informed me that the Show Cause matter had been tried in my absence.

Again, this was not a willful disregard of the scheduling practices of the Court. It is a matter of practice that attorneys have more than one matter set on the 9:30 a.m. dockets. Attorneys typically pass matters so that they can leave and handle other matters. This is precisely what I did on the morning of December 11, 2001. Again, I did not deliberately or knowingly miss a court hearing.

Mr. Pilli is guilty of misbehavior as an officer of this Court and as such is in contempt

Answer: Denied.

I did not intentionally or knowingly disobey any Order of Judge Cassidy in this matter. The Order rendered and affirmed by Judge Cassidy started as a very simple scheduling mistake. It escalated into a contempt finding against me. The basis for the contempt Order was that I missed a scheduled court date. As explained above, this was an inadvertent mistake. As an officer of the court, it is my duty to appear before the Court when either my appearance is entered or when requested by the Court. To that end, I always attempt to be prepared and properly schedule court matters. While I do not agree with Judge Cassidy's order, I have served my punishment. In addition to paying the fines imposed, I spent two days in the Fairfax County Adult Detention Center. My honest mistake has not gone unpunished.

III. CONCLUSION

It is my sincere hope that the responses provided herein are helpful in determining an appropriate disposition of this matter. I would like to reiterate that: (1) I did not intentionally or knowingly disregard the trial date of October 16, 2001; (2) I did not intentionally or knowingly fail to make myself available for service of the Show Cause Order; (3) I did not intentionally or knowingly fail to appear at the Show Cause hearing; and (4) my actions did not prejudice my client. I have attached several documents relevant to the Complaint.

If I can be of any further assistance in this matter, please contact my attorneys, Paul D. Krause and Lynne C. Kemp at (202) 326-7660. Thank you.

Very truly yours,

\s\ Dominick A. Pilli
Dominick A. Pilli

Enclosures

VIRGINIA STATE BAR

Fifth District Section I Committee

IN THE MATTER OF DOMINTCK ANTHONY PILLI, ESQ.

VSB Docket 02-051-2053

AFFIDAVIT OF MOLLIE COLEMAN

I, Mollie Coleman, do solemnly affirm under penalties of perjury that I am over the age of 18 years of age, that I am competent to testify and, being duly sworn; deposes and states that the following Affidavit is made based upon personal knowledge.

1. I am the secretary in the Law Offices of Dominick A. Pilli, Esq.

2. I called the Clerk's Office of the General District Court for Fairfax County, Virginia to confirm a Continuance Request regarding Commonwealth of Virginia, County of Fairfax v. Walter Bordeaux, Docket No. T 01-125.

3. The Clerk's Office informed me that the matter had been continued from September 18, 2001 to January 17, 2002.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING AFFIDAVIT IS TRUE AND CORRECT.

April 9, 2002
Dated

\s\ Mollie Q. Coleman
Mollie Coleman